

268

W. J. Johnston
John J. Johnston

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 111

THE UNITED STATES OF AMERICA, PETITIONER,

JAMES J. JOHNSTON

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT
OF APPEALS *for the Second Circuit*

WRITING FOR CERTIORARI FILED JULY 2, 1925
CERTIORARI AND RETURN MADE NOVEMBER 14, 1925

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No. 111

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SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES OF AMERICA, PETITIONER,

vs.

JAMES J. JOHNSTON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS

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UNITED STATES OF AMERICA, 88.

Because, in the record and proceedings, as also in the rendition of the judgment of plea which is in the district court, before you, or some of you, between the United States of America and James J. Johnston, a manifest error hath happened, to the great damage of the said James J. Johnston, as is said and appears by his complaint, we, being willing that such error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the judges of the United States Circuit Court of Appeals for the Second Circuit, at the city of New York, together with this writ, so that you have the same at the said place before the judges aforesaid on the fourth day of January, 1922, that the record and proceedings aforesaid being inspected, the said judges of the United States Circuit Court of Appeals for the Second Circuit may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

[SEAL] (Signed) ALEX GILCHRIST, Jr.,
Clerk of the District Court of the United States of America
for the Southern District of New York, in the Second
Circuit.

(Signed) **WILLIAM C. VAN FLEET,**
United States District Judge.

THE UNITED STATES OF AMERICA
against
JAMES J. JOHNSTON, DEFENDANT

James J. Johnston, the defendant herein, feeling himself aggrieved by the verdict of the jury and the judgment entered on the

5th day of December, 1921, comes now by his attorney and petitions this court for an order allowing the defendant to prosecute a writ of error to the honorable the judges of the Circuit Court of Appeals of the United States for the Second Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of the security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of the said writ of error by the said Circuit Court of Appeals of the United States for the Second Circuit.

Wherefore this defendant prays for the allowance of a writ of error and for an order fixing the amount of said bond and for such further orders and process as may cause the errors complained of to be corrected by the said Circuit Court of Appeals of the United States for the Second Circuit, and that said verdict, judgment, and sentence be set aside, and your petitioner will ever pray, etc.

Dated November 30th, 1921.

GEORGE E. COUGHLIN

AND

ARTHUR N. SAGER,

Attorneys for Defendant.

5 [Title omitted.]

This the 6th day of December, 1921, came the defendant, by his attorney, and filed herein and presented to the court his petition praying for the allowance of a writ of error intended to be urged by him, praying also that a transcript of the record and proceedings and papers upon which judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error upon the defendant giving bond, according to law, in the sum of two thousand (\$2,000) dollars, which shall operate as a supersedeas bond.

(Signed) WM. C. VAN FLEET,
United States District Judge.

6 In United States District Court

Indictment

In the District Court of the United States of America for the Southern District of New York

SOUTHERN DISTRICT OF NEW YORK, ss:

The grand jurors for the United States of America, duly empaneled and sworn in the District Court of the United States for the

Southern District of New York, and inquiring for that district, upon their oath present:

That heretofore, to wit, on the 31st day of March, 1921, in the Southern District of New York and within the jurisdiction of this court, James J. Johnston unlawfully, knowingly and wilfully failed and refused to account for and pay over to the United States the sum of \$618.00, being the amount of excise taxes due and payable to the United States under the provisions of Title VIII of the act of February 24, 1919, known as the revenue act of 1918, upon money received by the said James J. Johnston in payment of admissions, the said offense being more particular described as follows:

That on February 28, 1921, the said defendant conducted a boxing contest in the building known as the Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, New York City, and collected the admission fees paid by persons attending the said contest amounting to the sum of \$6,180.00, and there was due to the United States under the provisions of the revenue act of 1918 upon the aforesaid amount as a tax thereon the sum of \$618.00, and the defendant has "unlawfully, knowingly, and wilfully failed and refused to account for or pay over the said sum against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided

7 (sections 800, 802, and 1308 of the Internal Revenue Law).

SECOND COUNT

And the grand jurors aforesaid on their oath aforesaid do further present that heretofore, to wit, on the 31st day of March, 1921, in the Southern District of New York and within the jurisdiction of this court, the above-named James J. Johnston unlawfully failed to make a return to the collector of internal revenue of the United States of money collected by him in payment of admissions to a boxing contest conducted by the defendant at the Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, city, county, and State of New York, on February 28th, 1921, in violation of the act of February 24, 1919, known as the revenue act of 1918, and that the defendant collected in payment of such admissions from the persons attending the said contest the sum of \$6,180.00, and in addition thereto the defendant collected \$618 as taxes on said admissions, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (sections 800, 802, and 1308 of the internal revenue law).

THIRD COUNT

And the grand jurors aforesaid on their oath aforesaid do further present that heretofore, to wit, on the first day of April, 1921, in the Southern District of New York and within the jurisdiction of this

court, the above-named defendant James J. Johnston unlawfully, knowingly, and wilfully embezzled the sum of \$618.00, which was then and there money of the United States, in the following
8 manner, to wit, the said defendant conducted a boxing contest on February 28, 1921, at the Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, New York City, and collected the sum of \$6,180.00 in payment of admissions thereto and in addition as taxes upon the said admissions under the provisions of the act of February 24, 1919, known as the revenue act of 1918, the defendant collected the sum of \$618.00, representing a tax of one cent for every ten cents or fraction thereof paid by the various persons attending the said contest for admission thereto; that the said sum of \$618.00 was money of the United States and was collected by the defendant under the provisions of said revenue act of 1918 for and on behalf of the United States, and it was the duty of the defendant to account for and pay over the said sum to the United States, and the defendant unlawfully, knowingly, and wilfully failed to pay the said sum to the United States and converted the same to his own use, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (section 47 of the Criminal Code).

FOURTH COUNT

And the grand jurors aforesaid on their oath aforesaid do further present that heretofore, to wit, on the 30th day of April, 1921, in the Southern District of New York, and within the jurisdiction of this court, James J. Johnston unlawfully, knowingly, and wilfully failed and refused to account for and pay over to the United States the sum of \$2,937.30, being the amount of excise tax due and payable to the United States under the provisions of Title VIII of the act of February 24, 1919, known as the revenue act of 1918, upon
9 money received by the said James J. Johnston in payment of admissions, the said offense being more particularly described as follows:

That on the 10th, 24th, and 31st days of March, 1921, the said defendant conducted boxing contests in the building known as the Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, New York City, and collected the admission fees paid by persons attending the said contests amounting to \$29,373.00, and there was due to the United States under the provisions of the revenue act of 1918 upon the aforesaid amount as a tax thereon the sum of \$2,937.30, and the defendant has unlawfully, knowingly, and wilfully failed and refused to account for or pay over the said sum against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (sections 800, 802, and 1308 of the internal revenue law).

FIFTH COUNT

And the grand jurors aforesaid on their oath aforesaid do further present that heretofore, to wit, on the 30th day of April, 1921, in the Southern District of New York and within the jurisdiction of this court, the above-named defendant James J. Johnston unlawfully failed to make a return to the collector of internal revenue of the United States of money collected by him in payment of admissions to boxing contests conducted by the defendant at the Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, city, county, and State of New York, on the 10th, 24th, and 31st day of March, 1921, in violation of the act of February 24, 1919,

known as the revenue act of 1918, and that the defendant col-

10 lected in payment of such admissions from the persons attending the said contests the sum of \$29,373.00 and in addition thereto the defendant collected \$2,937.30 as taxes on said admissions against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (sections 800, 802, and 1308 of the internal revenue law).

SIXTH COUNT

And the grand jurors aforesaid on their oath aforesaid do further present that heretofore, to wit, on the first day of May, 1921, in the Southern District of New York, and within the jurisdiction of this court, the above-named defendant James J. Johnston unlawfully, knowingly, and wilfully embezzled the sum of \$2,937.30, which was then and there money of the United States, in the following manner, to wit, the said defendant conducted boxing contests on the 10th, 24th, and 31st days of March, 1921, at the Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, New York City, and collected the sum of \$29,373.00 in payment of admissions thereto and in addition as taxes upon the said admissions under the provisions of the act of February 24, 1919, known as the revenue act of 1918, the defendant collected the sum of \$2,937.30, representing a tax of one cent for every ten cents or fraction thereof paid by the various persons attending the said contests for admission thereto; that the said sum of \$2,937.30 was money of the United States and was collected by the defendant under the provisions of said revenue act of 1918 for and on behalf of the United States and it was the duty of the defendant to account for and pay over the said sum

to the United States, and the defendant unlawfully, know-

11 ingly, and wilfully failed to pay the said sum to the United States and converted the same to his own use against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (section 47 of the Criminal Code).

SEVENTH COUNT

And the grand jurors aforesaid on their oath aforesaid do further present that heretofore, to wit, on the 31st day of May, 1921, in the Southern District of New York and within the jurisdiction of this court, James J. Johnston unlawfully, knowingly, and willfully failed and refused to account for and pay over to the United States the sum of \$1,998.10, being the amount of excise tax due and payable to the United States under the provision of Title VIII of the act of February 24, 1919, known as the revenue act of 1918, upon money received by the said James J. Johnston in payment of admissions, such offense being more particularly described as follows:

That on the 7th and 13th days of April, 1921, the said defendant conducted boxing contests in the building known as Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, New York City, and collected the admission fees paid by persons attending the said contests amounting to the sum of \$19,981.00, and there was due to the United States under the provisions of the revenue act of 1918 upon the aforesaid amount as a tax thereon the sum of \$1,998.10, and the defendant has unlawfully, knowingly, and willfully failed and refused to account for or pay over the said sum against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (sections 800, 802, and 1308 of the internal revenue law).

EIGHTH COUNT

And the grand jurors aforesaid on their oath aforesaid to further present that heretofore, to wit, on the 31st day of May, 1921, in the Southern District of New York and within the jurisdiction of this court, the above-named defendant James J. Johnston unlawfully failed to make a return to the collector of internal revenue of the United States of money collected by him in payment of admissions to boxing contests conducted by the defendant at the Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, city, county, and State of New York, on the 7th and 13th days of April, 1921, in violation of the act of February 24, 1919, known as the revenue act of 1918, and that the defendant collected in payment of such admissions from the persons attending the said contest the sum of \$19,981.00 and in addition thereto the defendant collected \$1,998.10 as taxes on said admissions against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (sections 800, 802, and 1308 of the internal revenue law).

NINTH COUNT

And the grand jurors aforesaid on their oath aforesaid do further present that heretofore, to wit, on the first day of June, 1921,

in the Southern District of New York, and within the jurisdiction of this court, the above-named defendant James J. Johnston unlawfully, knowingly, and willfully embezzled the sum of \$1,998.10, which was then and there money of the United States, in the following manner, to wit, the said defendant conducted boxing contests on the 7th and 13th days of April, 1921, at the Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, New York City, and collected the sum of \$19,981.00 in payment of admissions thereto and in addition as taxes upon the said admissions under the provisions of the act of February 24, 1919, known as the revenue act of 1918, the defendant collected the sum of \$1,998.10, representing a tax of one cent for every ten cents or fraction thereof paid by the various persons attending the said contests for admission thereto; that the said sum of \$1,998.10 was money of the United States and was collected by the defendant under the provisions of said revenue act of 1918 for and on behalf of the United States, and it was the duty of the defendant to account for the said sum to the United States and the defendant unlawfully, knowingly, and willfully failed to pay the said sum to the United States and converted the same to his own use against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (section 47 of the Criminal Code).

TENTH COUNT

And the grand jurors aforesaid on their oath aforesaid do further present that heretofore, to wit, on the 30th day of June, 1921, in the Southern District of New York and within the jurisdiction of this court, James J. Johnston unlawfully, knowingly, and wilfully failed and refused to account for and pay over to the United States the sum of \$850.50, being the amount of excise tax due and payable to the United States under the provisions of Title VIII of the act of February 24, 1919, known as the revenue act of 1918, upon money received by the said James J. Johnston in payment of admissions, the said offense being more particularly described as follows:

That on the 3rd and 19th days of May, 1921, the said defendant conducted a boxing contest in the building known as the Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, New York City, and collected the admission fees paid by persons attending the said contest amounting to the sum of \$8,505.00, and there was due to the United States under the provisions of the revenue act of 1918 upon the aforesaid amount as a tax thereon the sum of \$850.50, and the defendant has unlawfully, knowingly, and wilfully failed and refused to account for or pay over the said sum against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (sections 800, 802, and 1308 of the internal revenue law).

ELEVENTH COUNT

And the grand jurors aforesaid on their oath aforesaid do further present that heretofore, to wit, on the 30th day of June, 1921, in the Southern District of New York and within the jurisdiction of this court, the above-named James J. Johnston unlawfully failed to make a return to the collector of internal revenue of the United States of money collected by him in payment of admissions to a boxing contest conducted by the defendant at the Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, city, county, 15 and State of New York, on February 28, 1921, in violation of the act of February 24, 1919, known as the revenue act of 1918, and that the defendant collected in payment of such admissions from the persons attending the said contest the sum of \$8,505.00, and in addition thereto the defendant collected \$850 as taxes on said admissions against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (sections 800, 802, and 1308 of the internal revenue law).

TWELFTH COUNT

And the grand jurors aforesaid on their oath aforesaid do further present that heretofore, to wit, on the first day of July, 1921, in the Southern District of New York and within the jurisdiction of this court, the above-named defendant, James J. Johnston, unlawfully, knowingly, and wilfully embezzled the sum of \$850.50, which was then and there money of the United States, in the following manner, to wit: The said defendant conducted a boxing contest on February 28, 1921, at the Manhattan Casino, 155th Street and 8th Avenue, Borough of Manhattan, New York City, and collected the sum of \$8,505.00 in payment of admissions thereto and in addition as taxes upon the said admissions under the provisions of the act of February 24, 1919, known as the revenue act of 1918, the defendant collected the sum of \$850.50, representing a tax of one cent for every ten cents or fraction thereof paid by the various persons attending the said contest for admission thereto; that the said sum of \$850.50 was money of the United States and was collected by the defendant under the provisions of said revenue act for 1918 for and 16 on behalf of the United States, and it was the duty of the defendant to account for and pay over the said sum to the United States, and the defendant unlawfully, knowingly, and wilfully failed to pay the said sum to the United States and converted the same to his own use, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (section 47 of the Criminal Code).

WILLIAM HAYWARD,
United States Attorney.

17

In United States District Court

[Title omitted.]

Docket entries

1921

Sept. 9. Filed indictment.

19. Defendant pleads not guilty.

19. Filed recognizance, \$100. Ed. J. Byrne, surety.

Nov. 7. Filed recognizance, National Surety Co.

3. Trial begun before Van Fleet, J.

4. Trial continued.

18 7. Trial concluded. Verdict guilty on counts 1-12, with a very strong recommendation of mercy of the court. Sentence adjourned to November 10, 1921. Bail fixed at \$5,000.00 for appearance on 11/10/21.

Nov. 10. Sentence adjourned to November 14.

14. " " " " 28.

28. " " " " 29.

29. " " " " 30.

30. " " " December 3.

Dec. 3. " " " " 5.

5. Defendant sentenced to 60 days in Essex Co. Jail, Newark, N. J., and to pay a fine of \$500.00 and to stand committed until fine be paid and released on \$2,000 pending appeal. Issued commitment and duplicate.

6. Filed recognizance on writ of error, \$2,000. National Surety filed petition for writ of error, writ of error, citation, assignment of error, order allowing writ and order extending time to file amended assignment of errors to 30 days from date.

1922

Mar. 6. Filed order, Webb, J., Nov. Term, 1921, extended to June 5, 1922.

31. Filed order, A. N. Hand, J., Nov. Term, 1921, extended to Aug. 5, 1922.

Aug. 3. Filed order, A. N. Hand, J., Nov. Term, 1921, extended to Sept. 5, 1922.

3. Filed bill of exceptions and letter from W. J. Van Fleet, J.

Oct. 16.

19

In United States District Court

Verdict

Verdict guilty on counts one to twelve, with a very strong recommendation of mercy of the court. Sentence adjourned to November 10, 1921. Bail fixed at \$5,000 for appearance on November 10, 1921.

In United States District Court

Judgment

Sentence adjourned to December 5, 1921.

Sentenced to sixty days in Essex County jail, Newark, New Jersey, and to pay a fine of \$500, and to stand committed etc.

VAN FLEET, J.

Released in \$2,000 bail pending appeal.

20

In United States District Court

[Title omitted.]

Bill of exceptions

Be it remembered that the above-entitled cause came on for trial on the 3rd day of November, 1921, being one of the days of the November term of said court, before the Honorable W. C. Van Fleet, one of the judges of said court, and a jury duly impaneled.

P. T. McCoy, assistant to the United States district attorney, appeared as counsel for the Government.

George E. Coughlin, Esq., appeared as counsel for the defendant.

The jury was impaneled and examined, and after they were selected were duly sworn.

21 (Mr. McCoy opened the case to the jury on behalf of the Government.)

The Government, to maintain its cause, offered the following evidence, to wit:

FRANK C. HAYDEN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. McCoy:

Q. Mr. Hayden, what is your occupation?

A. I am an attorney.

Q. Admitted to the bar of the State of New York?

A. Yes.

Q. Do you know the defendant, James J. Johnston?

A. I do.

Q. When did you first meet the defendant James J. Johnston; about when?

A. I think I met him first about two or three years ago.

Q. Do you know anything about the affairs of the Central Manhattan Boxing Club?

A. Yes.

Q. Were you the attorney for the Central Manhattan Boxing Club in 1921, the months of February, March, and April?

A. No; I was the attorney for the Central Manhattan Boxing Club during the months of January and February, that is the time I

acted for the club. At other times I was acting for the Manhattan Casino.

Q. Then you represented the owners of the Manhattan Casino?

A. Owners and lessees; that is to say, the owner leased to a corporation. The two owners leased to a corporation.

Q. Who were the lessees?

A. The Manhattan Casino, Inc.

Q. Did the Manhattan Casino, Inc., sublet the premises to the Manhattan Boxing Club?

A. Yes.

22 Q. The Central Manhattan Boxing Club?

A. Yes.

Q. Did you act as attorney in drawing any papers in connection with that subletting?

A. I drew the lease to the Central Manhattan Boxing Club, Inc., for the Manhattan Casino.

Q. What was the Central Manhattan Boxing Club, Inc., formed for; for what purpose?

A. It was formed solely for the purpose of conforming to the law of the State athletic commission, which required that any license given must, for a boxing exhibition, be given to a domestic corporation, not—well, a domestic corporation.

Q. And did the Central Manhattan Boxing Club obtain a license from the State athletic commission to conduct boxing contests?

A. A license was given to the Central Manhattan Boxing Club about November 26th or November 28th, 1920; about that date.

Q. Did the Central Manhattan Boxing Club operate under that license?

A. Yes.

Q. They conducted boxing contests?

A. Yes.

Q. It is customary, as I understand it, according to the law of New York State, that each boxing club, as part of the personnel of each boxing club, there is a matchmaker; isn't that so?

A. That is provided in the application for the license. The matchmaker to give his pedigree so that the boxing commission may approve or disapprove—

Q. Of his character?

A. Of his character.

Q. Who was the matchmaker for the Central Manhattan Boxing Club at the time that they obtained this license from the State of New York?

A. James J. Johnston.

Q. Was James J. Johnston solely the matchmaker; was he employed in that capacity by the Central Manhattan Boxing Club?

23 Mr. COUGHLIN. I object to any further testimony concerning the relations of James J. Johnston and the Central Manhattan Boxing Club by this witness on the ground that this witness

would be violating a confidence, that these matters came in to his knowledge by reason of the professional relation of attorney and client, that during a period that he learned these intimate relations concerning Mr. Johnston he was acting as attorney for Mr. Johnston and receiving fees in payment of his service.

The COURT. The Government is not bound by that. That rule obtains in civil controversies. Of course, the Government, in a criminal prosecution, is not bound by that rule at all. The objection is overruled.

Mr. COUGHLIN. Exception.

Q. (The stenographer repeated the last question.)

A. He was.

Q. Was he paid a salary?

A. No, sir.

Q. What compensation did he receive from the Central Manhattan Boxing Club for acting as matchmaker?

A. No compensation from the club whatsoever.

The COURT. What was his relation?

The WITNESS. A contract was signed by Mr. Johnston wherein and whereby he agreed to pay a specific rental for the use of the Manhattan Casino at least one night a month, and he agreed to conduct the affairs of the boxing exhibitions and pay a specific rental, and all that the club or casino agreed to do was to furnish the hall of the Manhattan Casino, lighted and heated for a boxing
24 contest, with a ring and as many chairs as they had left of the previous régime of boxing in New York State, and that closed the books so far as the club or casino was concerned; and Johnston, on his part, agreed to furnish us ticket takers, ticket sellers, exhibitions, and to pay for the exhibitors, the boxers, and be solely responsible for any contract entered into with anyone that did anything in and about the carrying on of the contest each night; \$750 to be paid for the first night each month and \$500 for each succeeding night during the month.

Q. Is that all in the contract that you referred to?

A. Yes, sir.

Q. The Government issued a subpoena duces tecum to produce that certain contract?

A. Yes.

Q. Have you that contract with you?

A. Yes.

Q. May I see it, please?

A. (Witness produces paper.)

Mr. McCox. I offer this contract in evidence, your honor.

Mr. COUGHLIN. Objected to on the ground that the contract is one which is a matter of civil relation between this defendant and another person, and that it can not fix any criminal liability, the only issue involved in this prosecution.

Mr. McCox. Your honor, the contract is going to show the relationship between the defendant and the Central Manhattan Boxing

Club, to show who is responsible for the taxes that should have been paid to the Government.

The COURT. The objection is overruled.

Mr. COUGHLIN. Exception.

25 (The contract above referred to was received in evidence and marked "Government's Exhibit 1" of this date.)

(Mr. McCoy then read Exhibit 1 to the jury.)

(A recess was taken to November 4, 1921, at 10.30 a. m.)

NEW YORK, *November 4, 1921, 10.30 a. m.*

FRANK C. HAYDEN resumed the stand.

DIRECT EXAMINATION CONTINUED BY MR. MCCOY:

Q. Mr. Hayden, I am reading now from the Government's Exhibit No. 1, namely, the contract between the Central Manhattan Boxing Club and James J. Johnston, executed and entered into on the 26th day of November. One of the provisions in the agreement is as follows: "This contract shall remain in force during the life of the present license held by the Central Manhattan Boxing Club, Inc., but may be terminated by either party by the giving of ninety days' written notice." Was such notice ever given to the Central Manhattan Boxing Club of termination?

A. To the Central Manhattan Boxing Club?

Q. Yes.

A. No.

Q. In other words, this contract is still in force, as far as any notice being given terminating it is concerned?

A. No; I terminated the contract; I gave a ninety-day notice some time on June the first, and the contract was terminated on or about September the first.

26 Q. You, on behalf of the Central Manhattan Boxing Club?

A. Yes; terminated the contract.

Q. What was your reason for terminating that contract?

A. Well, on May 19th Johnston was in arrears to the club in the sum of \$952.

Q. For rent?

A. For rent.

Q. That was rent for the various contests that he had held there?

A. That was \$250 balance of May 3rd, \$250 forfeit of May 10th, and \$500 rental for the contests held on the evening of May 19th, making a total of \$1,000; and then Mr. Waldron, of the Manhattan Casino, had purchased \$48 worth of tickets; that left a balance due from Johnston to the club or the casino—all of the checks were made direct to Mr. Waldron, not to the club at all—in the sum of \$952.

Q. Whose checks were they; were they the personal checks of James J. Johnston, the defendant?

A. Well, I was given a check of Mr. Johnston's, and I gave a receipt for the sum of \$952, in full payment of the account, to him,

and shortly after that Mr. O'Brien said that Mr. Johnston would call at the Casino and give me the money in cash.

Q. Who is Mr. O'Brien?

A. Joe O'Brien was Johnston's assistant.

Q. Is that the gentleman for whom I have requested a warrant be issued?

A. I don't know anything about that.

Q. Joseph N. O'Brien?

A. I only know his name is O'Brien—Joe O'Brien possibly; I am not sure of his first name; his name is O'Brien, I think, and I think his first name is Joe, but I am not positive about that.

Q. Who was he?

A. He was the man that took charge of all of Johnston's financial matters; he would give me the cash or he would give me a
27 check; I would give him a receipt, or he would give me a receipt, however it happened to be; he handled all his affairs.

Q. He was Johnston's agent?

A. He was Johnston's agent. I handled everything for the Manhattan Casino and the Central Manhattan Boxing Club, and all moneys that were paid to the club were paid to me by O'Brien. I don't recall that Johnston ever paid me a nickel; O'Brien gave me the checks or cash and I gave O'Brien back a receipt for any moneys that were due for rent, and the only money that we ever received was moneys for rent.

Q. Did you ever ask Johnston for this rent money?

A. Yes; I wrote him several times; I talked with him over the telephone, sent men over to his office, and finally gave it up.

Q. Did he ever tell you that his agent, O'Brien, would pay you?

A. No; he told me he would pay me; I think it was about July the 12th he was at my office and he agreed at that time to execute a confession of judgment in the sum of \$3,202. That was rent to September the 1st, or he would pay me in cash \$1,700—that is, by a series of three or four notes—I still have the notes unsigned and I still have the confession of judgment unsigned; I still have the agreement unsigned in my pocket here, I believe—that was to be in settlement of our account. About that time we had been before the boxing commission on the payment of the State tax, Johnston said he had paid that, that he had sent a man to Albany to appear before the boxing commission, and it was a few days after that that the president of the club was served with a subpoena and brought it to my office to appear at the United States district attorney's office.

So then I called up Johnston and his attorney answered on the
28 'phone and said that he understood the tax had been paid to the Government. So then he put O'Brien on the 'phone.

Q. Is this the same Joe O'Brien?

A. That is O'Brien. O'Brien said the Federal tax had been paid. "Well," I said, "before I will do anything further on settling the account of the club with Johnston I want to see the receipt from

the Government showing that that tax has been paid by Johnston as the agreement calls for." He said he would do that. Since then I never saw Johnston in my office.

Q. Did Johnston hold O'Brien out to you as his agent?

A. I don't know whether you would say held him out; O'Brien handled all of his matters, all of the financial arrangements; all the cash was held by O'Brien; O'Brien paid off all of the ushers, the ticket takers, and ticket sellers, referees, and timekeepers; they were all paid by O'Brien.

Q. Isn't it a fact that O'Brien held himself out as Johnston's secretary?

Mr. COUGHLIN. I object to that, your honor, as not binding on this defendant.

The COURT. Yes; I think so.

Mr. McCoy. I withdraw the question.

Q. Under this agreement did the defendant conduct boxing contests at the Manhattan Casino during the months of February, March, April, and May of 1921?

A. Yes.

Q. And did he pay to the Central Manhattan Boxing Club, according to this agreement, rentals due for those contests?

A. He did; he paid the rent right along up to May 3rd, and that night there was a balance due of \$250, and up to that time he had paid the rent right along, paid his obligations to the club in full.

29 The payments were a little bit delayed at times, but Johnston always made the payments in the course of a few days—the payments were a little late sometimes, but he would make the payments later.

Q. And during the time he conducted these bouts, did the Central Manhattan Boxing Club at any time employ any of the ticket takers, ticket sellers, ushers, or any of the other employees connected with the conduct of these contests?

The COURT. Did he employ them or the boxing club?

Mr. McCoy. The Central Manhattan Boxing Club.

The WITNESS. No.

The COURT. They had nothing to do with that?

The WITNESS. No; if I might state, the Central Manhattan Boxing Club was incorporated at Johnston's expense for the purpose of getting a license. Johnston paid the cost of incorporating; Johnston also paid the license fee of \$750; Johnston paid \$50, the cost of the bond; and the only reason why the corporation was formed was simply that Johnston could get a license for the operation of a boxing club, and the license was issued to him personally, and he still has it.

Q. He still has that license?

A. Yes.

The COURT. And under the State law the license has to be in the hands of a corporation?

The WITNESS. Of a corporation. That being true, a corporation was formed at Johnston's expense. He paid me the cost of incorporating and paid the license fee of \$750, and he paid the premium on the bond.

30 Q. Mr. Hayden, did anybody at any time, other than the defendant James J. Johnston, conduct boxing contests at the Manhattan Casino or the Central Manhattan Boxing Club during the months of February, March, April, and May, 1921?

A. Yes.

Q. Will you state the circumstances and the time?

A. On April 19th the Manhattan Casino, for no charge, gave the use of the hall to a colored organization for a charitable purpose, and this colored organization, conducted by a Mrs. Dr. Reed, desired to hold boxing bouts, and she went down to the boxing commission and was told that the only way boxing exhibitions could be held was under a license, and she was referred to Mr. Johnston. Mr. Johnston told me that he received \$500 for the use of the license on that night. I asked him to give some part of that \$500 to the casino in view of the fact that the hall had been used; that there was certain wear and tear and that they should get some part of it. He said, "No; Mr. Waldron gave the use of the hall for nothing; that is his business; I am giving this organization the use of the license for \$500, and that is my business; the license belongs to me," and he kept the \$500.

Mr. McCoy. Your witness.

Cross-examination by Mr. COUGHLIN:

Q. Mr. Hayden, you are an attorney admitted to the practice of law?

A. Yes.

Q. Did you ever represent the Manhattan Casino, Inc.?

A. Yes.

Mr. McCoy. Your Honor, this has all been testified to.

The COURT. He has already said so.

31 Mr. COUGHLIN. There were various corporations there bearing similar names and I want to have it all brought out.

The COURT. It is proper cross-examination.

Q. Did you ever represent the Manhattan Athletic Club?

A. Yes.

Q. Did you ever represent the Central Manhattan Boxing Club?

A. Yes, sir.

Q. Did you ever represent James J. Johnston as his attorney?

A. Yes, sir.

Q. When this contract between the Central Manhattan Boxing Club and Johnston was entered into, did you represent Johnston as his attorney at that time?

A. No, sir.

Q. Who did you represent then?

A. I represented the Manhattan Casino, the owners of the Manhattan Casino.

Q. Well, they were not a party to the contract; the contract was between the Manhattan Casino, Inc., and James J. Johnston; who did you represent?

A. I represented the Manhattan Casino.

Q. Were they a party to that contract?

A. They were.

The COURT. Owners of the property?

The WITNESS. Yes, sir.

Mr. COUGHLIN. Your honor, can I show the witness the contract which is in evidence?

The COURT. Certainly.

Q. Will you show me, anywhere in that contract, where the Manhattan Casino is mentioned as a party or appears as a party?

A. The Manhattan Casino does not appear here in black and white, but it was necessary to have a lease drawn from the casino.

32 Mr. COUGHLIN. I object to the voluntary statement of the witness, not responsive to my question.

The COURT. As I understand the transaction, he testified to it yesterday, that the Manhattan Casino was the owner of this property and it contracted with this corporation to let it have the property of this corporation that is recited in this contract, and they made a contract with Johnston; is that the situation?

The WITNESS. That is right.

The COURT. That is what he testified to yesterday.

Q. Didn't the Manhattan Casino, Inc., make a lease with the Central Manhattan Boxing Club?

A. It did.

Q. Wasn't there another corporation intermediary there?

A. There was a previous boxing club known as the Manhattan Athletic Club of America and a previous contract had been drawn up between Johnston and the Central Manhattan Athletic Club in 1917, I believe, and we endeavored, in 1920, to have a similar contract drawn, but Johnston's associates made many changes, and when it came down to about the end of November, because of the fact that the Manhattan Athletic Club of America was a membership corporation, the State Athletic Commission were not desirous of giving a license; they said, "You will have to give a complete statement of the assets and the membership," and a great big rigamarole, which would have made it practically impossible to go ahead because the Manhattan Athletic Club was a membership corporation, which practically ceased to exist with the old boxing law. So, at the suggestion of the boxing commission, and at their instance, this
33 Central Manhattan Boxing Club, Inc., was formed, and that club is the party which does the work for the Manhattan Casino. In other words, we had to have that club contract with Johnston; the Central Manhattan Casino could not contract with them because they did not hold a license, so I formed that club. Here is the situation, Mr. Johnston says, "I want to run boxing bouts—"

Q. Did you draw that contract?

A. I did.

Q. Did Mr. Johnston have any attorney present when it was executed?

A. I don't know if any of the men were attorneys or not; there were about five of them that looked it over, and they made various changes in it, as appears on the contract itself.

Q. Was Johnston, the defendant here, an officer or stockholder of the Central Manhattan Boxing Club?

A. No, sir.

Q. You have mentioned a man by the name of Joseph O'Brien; do you know whether he was an officer of the corporation or not?

A. He was appointed by Johnston as the assistant treasurer. In other words, Johnston told me that the report was sent to the State and Federal authorities by O'Brien; that O'Brien was signing his name as assistant treasurer without the consent of anybody connected with the corporation.

Q. Did you ever authorize the appointment of O'Brien as assistant treasurer?

A. No. I told Johnston it would be all right; he could send the reports direct through O'Brien if he wanted to do so, so long as the reports went in to the State and to the Government, because we had considerable delay having the reports signed by Mr. Smith, of 50 Broad Street—I handled that myself, and it took about two days to do it, to get the same Mr. Smith to sign the reports of the income and the returns on the first night's fight—I did not do
34 it on the second night's fight, and Johnston told me that the report had been sent in by Mr. O'Brien, and that he signed his name as assistant treasurer. No meeting of the corporation was ever held electing O'Brien assistant treasurer, but I made no objection to it because it assisted Johnston in the conduct of his bouts under his license.

Q. Now, you took a long time to answer that question whether you authorized the appointment of O'Brien as assistant treasurer; now answer it yes or no.

A. I authorized it, yes; but there was no meeting of the corporation.

Q. Was anyone except yourself actively engaged in supervising the business of the Central Manhattan Boxing Club?

A. No, sir; I had entire charge of it.

Q. Were any payments of State taxes made by this assistant treasurer to you?

A. No, sir.

Q. Did you ever make any payment to the State boxing commission?

A. No, sir.

Q. Or to the comptroller's office?

A. No, sir.

Q. Do you know now, Mr. Hayden, whether there are any unpaid admission taxes charged by the collector of internal revenue against the Central Manhattan Boxing Club?

A. I personally don't know a thing about it, except that O'Brien stated that the tax had been paid and the district attorney's office informed me to the contrary.

Q. Had you ever received any notice of any other admission taxes due by that corporation which you represent had not been paid?

A. I never received a notice.

Q. Did you ever cause any notice to be given to the collector of internal revenue that a lease was made to Mr. Johnston, and that the collector was to look to him for payment of admission taxes?

A. No, sir.

35 Q. Did you ever cause any notice of that character to be sent to the State boxing commission?

A. No, sir.

The COURT. Are you an officer in either of these companies?

The WITNESS. No, sir. All of the mail addressed by the internal revenue officer or by the State collector of this tax was sent to the Central Manhattan Boxing Club, and all of the mail of the Central Manhattan Boxing Club was delivered personally to Johnston by the Manhattan Casino or was held there until his arrival, or notified at his home that he was to come and get it. So that every letter which was sent to the Central Manhattan Boxing Club was given personally to Mr. Johnston; nobody dared or would open up that mail, and it lay there, at times for a month, and when I was there in August there was still mail there for the Central Manhattan Boxing Club, which we would not open because it was Johnston's mail; so I wouldn't get any notice from the Government.

Q. Then, Mr. Hayden, when you stated a few minutes ago that nobody else was actively engaged in managing the affairs of the Central Manhattan Boxing Club you were forgetting Mr. Johnston; you mean he was actively engaged in managing it; is that right?

A. Well, the Central Manhattan, as a corporation, in any of the affairs of the corporation or the receipt of moneys, I had entire charge of that; but so far as the conduct of these bouts was concerned, and all communication which were directed to the club, were given
36 to Johnston. So far as the club was concerned, I handled all that matter; so far as correspondence is concerned, that went direct to Johnson, because it was his matter to take care of. You can appreciate the distinction; all we wanted was the rent, and that was paid by check, either to Mr. Waldron or to myself personally; that was the only money we ever received from Johnston.

Q. In this contract that was drawn by you between the Central Manhattan and Johnston, it doesn't mention anything about rent.

A. What does it say?

Mr. COUGHLIN. I ask to have that answer stricken out.

The WITNESS. Well, it is in evidence.

Q. When you drew this contract, Mr. Hayden, why didn't you call it a lease?

A. I had no reason for not calling it a lease; I simply drew up a contract, according to the terms of our agreement—you might call it a lease, and it might not be a lease; you might call it a contract, and it would still be a lease.

Q. You stated on your direct examination that a license was issued to Johnston; do you want to amend that?

A. The license was given to Johnston, I said, by the boxing commission. He went down there and paid the \$750, and they gave him a license. I never saw it, and I can say that nobody else that was a stockholder or officer or director in the Central Manhattan Boxing Club ever saw that license, because it was given to Johnston; and when he was up in my office in July settling up the accounts, I said, "I want that license before I settle up, because now we will have charge of it," but he said, "I will do nothing of the kind."

Q. Did you ever see the license?

A. No, sir.

37 Q. Do you know whether it was issued in his name or not?

A. I know it was issued in the name of the Central Manhattan Boxing Club; I surmise that because that is the party who held the license.

Q. Do you know whether that license would state that Mr. Johnston was given permission to conduct bouts in this State?

A. No; but the application for the license provided that he was a matchmaker, and it is understood in boxing—

Mr. COUGHLIN. I object and ask to have it stricken out as not responsive, merely a voluntary statement on the part of the witness.

The COURT. Well, he didn't finish it and it has no meaning. I think this would have to be construed as nothing more or less than a lease of the premises to the boxing club under its terms.

The WITNESS. Johnston is the outsider.

The COURT. I understand that, but counsel is asking why you designated this as a lease in drafting it.

Q. Mr. Hayden, you stated that all moneys that were paid to you under this contract were paid by a man named O'Brien.

A. Yes, sir; and I gave him a receipt—I have such a receipt with me, if you would like to see it, to show you the method. O'Brien had a book of receipts, and every man that worked there that night O'Brien would pay him money and he would sign a receipt and O'Brien kept that book of receipts, so when he gave me money I would give him back the receipt. The last time he gave me money he gave me the receipts and I still have the receipts to show you how the business was conducted, one of the last book of receipts.

38 Q. Were these sums paid on the night that the boxing exhibitions were conducted?

A. On the first two or three contests O'Brien paid the rent in cash. On the first night, when they had closed up for the night and were going home, I called their attention to the fact that they had not paid the rent, so we went back into the ticket office, the valise was opened up in Johnston's presence and \$750 taken out of the valise

in Johnston's presence and given to me. I then gave him a receipt for the \$750—so on the night in particular I do recall that they paid me on the night of the contest—they went back into the office at my instance and opened up the valise and gave me the \$750.

Q. Was that the only occasion?

A. No, sir; on two or three subsequent occasions I was paid in cash by O'Brien the rental for that night, or if there were any arrears I was paid up. But subsequently, on at least four or five occasions, I was paid by check given that night; either a check of one of Johnston's brothers or a personal check on a bank at 40th Street and Broadway—those checks I was told not to put in for a day or so until the money got into the bank. When I went down to have them certified I couldn't get it done.

Q. When application was made to the State boxing commission for a license to conduct bouts in the name of the Central Manhattan Boxing Club was anything said at that time to the effect that Johnston was the principal or that he would be responsible for the payment of taxes?

A. Before the boxing commission?

Q. Yes.

A. I don't think so. We submitted a written form of application and a license committee acted upon it; I didn't speak with any member of the license committee.

Mr. COUGHLIN. That is all redirect by Mr. McCoy.

39 Q. Mr. Hayden, did the Manhattan Boxing Club, Inc., ever make any reports, any boxing reports, to the State athletic commission for the payment of taxes?

A. To the State athletic commission?

Q. Yes.

A. You see, I handled the first report made to the State athletic commission within two days after the first bout; I superintended that myself, and E. O. Smith as secretary signed that statement, and it was brought to the commission by myself personally—I had to go there.

Q. On what date was that?

A. That would be about December 1st or 2nd.

Q. Well, we are not concerned with that. On February the bout that was held for the month of February, were the reports of the show filed for the month of February—did the Central Manhattan Boxing Club make any report, tax reports, to the State athletic commission for that month?

A. To the State athletic commission for the State tax, you mean?

Q. Yes.

A. I don't know anything about that. All I know is this—I don't know a thing about it; that was being handled by Johnston. Whether he made the reports or not I don't know.

Q. But the Central Manhattan Boxing Club did not make the reports?

A. No officer of the Central Manhattan Boxing Club or myself made any reports. Now, I exclude from my answer the assistant treasurer appointed by Johnston, who was supposed to make the report; I don't know what he did, but I do know that no duly authorized officer of the club ever made any report during the months of February, March, April, and May to the State athletic commission or anybody else; that was entirely handled by Johnston.

Q. You mentioned on cross-examination a receipt for
40 moneys received and paid to you by O'Brien. Have you that receipt with you?

A. Yes; I have.

Q. May I see it?

A. No; I don't find it.

Q. Would it be in your pockets, Mr. Hayden?

A. I took it out yesterday; I don't know whether I put it back or not.

Q. Well, Mr. Hayden, are you sufficiently familiar with the contents or the wording of that receipt—

A. Here it is [handing paper to counsel].

Q. Who did you receive this receipt from?

A. From O'Brien.

Q. O'Brien gave you this receipt?

A. Yes, sir.

Mr. McCoy. Your honor, I offer this receipt in evidence as showing the relation between the defendant James J. Johnston and O'Brien.

Mr. COUGHLIN. I object to it, your honor, as not binding on this defendant; not signed by him; he doesn't know anything about its existence; it might have been written out by Mr. O'Brien.

The WITNESS. It was written out by Mr. O'Brien, the body of it.

The COURT. Was the name of James J. Johnston stereotyped on there at that time?

The WITNESS. Yes, your honor. The body of the receipt was prepared by O'Brien in my presence; I signed it when I received the check, and when I gave back the check I got back the receipt.

The COURT. I will let it go in. It purports to be a receipt to Mr. Johnston.

Mr. COUGHLIN. Receipt addressed to Johnston?

The COURT. Yes.

41 Mr. McCoy. A receipt from James J. Johnston, and the receipt was drawn by Mr. O'Brien.

Mr. COUGHLIN. The defendant excepts.

(Marked "Government's Exhibit No. 2.")

Mr. McCoy. This receipt is dated May 19, 1921, received from James J. Johnston \$552, in full payment to date for Manhattan Casino, if check goes through. Signed F. C. Hayden, for the Central Manhattan Boxing Club.

The COURT. I don't think it says James J. Johnston.

Mr. McCoy. Yes, sir; James Johnston.

Q. This receipt was made out by Mr. O'Brien?

A. Yes, sir.

Q. He did not fill in the name of James J. Johnston?

A. That was stamped on all the receipts previously.

Q. And O'Brien filled in the handwriting?

A. That is right. There was \$250 balance of May 3rd, \$250 of May 10th, and \$500 May 19th, less \$48 in tickets given to Mr. Waldron, leaving a balance due of \$952 for rent.

Mr. McCoy. That is all.

Recross-examination by Mr. COUGHLIN:

Q. Mr. Hayden, when I asked you on cross-examination whether you had made any report to the State boxing commission for any exhibitions held during the period of this contract, did you say no?

A. I don't recall my answer; but I should have said no; I didn't make any report to the State boxing commission. I made complaint to the State boxing commission; do you mean a report
42 in the form of a complaint? I complained about Johnston; I did that.

Q. Did you ever make a return?

A. No return at all.

Q. Did you state on redirect that you had made returns on the first show that was held?

A. Well, on the first show that was held, I said that the secretary, E. O. Smith, the man I had appointed secretary of this club, signed a return, and I personally brought that report to the State boxing commission. Now, it may have been, and I think Johnston gave me the cash to pay the State boxing commission the tax—now that you recall it, he gave me in cash 5 per cent, which I paid over by my check, or I gave my check for the 5 per cent State tax for the first show, and it was after the first show that Johnston ran off himself, when this man O'Brien acted as assistant treasurer at his election—

Mr. COUGHLIN. I ask to have that stricken out.

The COURT. There is nothing improper in that; it is in answer to the question.

Q. As to the appointment of O'Brien, about which you were questioned, you just stated that you authorized or had a certain man appointed as secretary to the club; is that true?

A. Yes, sir.

Q. Was that the way that the officers of this club were selected, by your personal say-so?

A. This club was incorporated by myself. I had to have a corporation holding the lease from the Manhattan Casino that I could control. I couldn't give a corporation that could control the operation of that casino for a year to an outside organization, so the men
43 who held stock in the Manhattan Boxing Club were men I selected that should hold stock, and the officers were friends of mine that I personally selected because they were well known and well informed and men of good standing in the commu-

nity, so as to give the club a good appearance, and they were personal friends of mine, and those men made up the officers and directors of that club; Elbert O. Smith was secretary. It was a duly organized corporation, and we held meetings to carry out that idea, so it was done strictly in accordance with the law, and that is why it was done. But you asked me about the appointment of an assistant treasurer; that was Johnston's method of doing it; but, I say, I made no objection to his appointment of O'Brien as assistant treasurer so long as it assisted him in making the reports on time, getting them in on time; that was the idea.

Q. Was your position purely passive on this appointment as assistant treasurer, or did you take any positive stand on it yourself?

A. I took no positive stand I simply said all right.

Q. Did you ever notify anyone that he was assistant treasurer?

A. No, sir.

Q. Did you ever notify anyone that there was any such officer as that?

A. No, sir.

Q. Is that your signature to this paper, Mr. Hayden [handing witness paper]?

A. (No answer.)

Q. I ask you if that is your signature. I don't think it is necessary to read it.

A. Yes, sir; that is my signature.

Mr. COUGHLIN. I offer that in evidence.

Mr. McCoy. I have no objection.

(Marked "Defendant's Exhibit A.")

Mr. COUGHLIN (reading to the jury): "Gentlemen in the Central Manhattan Boxing Club: Your communication dated July
44 12th asking for the payment of November, 1920, tax of \$150.78 has been referred to me. Will you kindly notify me at once as to any and all amounts that are due for unpaid taxes on sales from November 28, 1920, to May 20, 1921. The taxes were collected and paid to the assistant treasurer and the matchmaker of the club, and the moneys, if not paid, are still held by them. Kindly advise me as to what amount is due and the dates for which the sales tax has not been paid. Yours very truly, (Signed) F. C. Hayden."

Q. Now, Mr. Hayden, do you want to amend your testimony that you never notified anybody that there was an assistant treasurer?

A. Well, I say I acquiesced in Johnston's statement.

Q. You notified the Government officials that there was an assistant treasurer of this club, didn't you?

A. I did.

Q. Was there any other person who was appointed assistant treasurer except O'Brien?

A. No, sir.

Mr. COUGHLIN. That is all.

By Mr. McCoy:

Q. Mr. Hayden, you testified that O'Brien was appointed assistant treasurer in a very informal way by Johnston to act as assistant treasurer in name for him, in order to facilitate the payment of these taxes.

A. Yes, sir.

Q. He was not appointed by any authorized meeting of the Central Manhattan Boxing Club, Inc.?

A. No; just simply let it stand.

Q. That is, you acquiesced merely in Johnston's appointment?

45 The COURT. Let him answer. He has already so stated, but I would not put the words in his mouth. His testimony was, in effect, that he simply acquiesced in the naming of O'Brien, because the whole transaction was Johnston's, and that he let Johnston's representative act as assistant secretary.

Q. You say "the taxes were collected and were paid to the assistant treasurer and the matchmaker of the club and the moneys, if not paid, are still held by them." Just what do you mean by that, Mr. Hayden?

The COURT. Well, what is there that one would not understand from that?

Mr. McCoy. I want to bring out clearly, your honor, how these moneys were collected and paid. It was apparently within his knowledge, when he writes such a letter of that kind, as to how they were collected or how they may be collected by the Central Manhattan Boxing Club and turned over to the matchmaker or the assistant treasurer, whether the assistant treasurer and the matchmaker collected the money.

The COURT. Well, you can ask him if the Central Manhattan Boxing Club ever in fact received the money, or how it came in to Johnston or to O'Brien; who received it?

The WITNESS. Johnston; Johnston and his assistant sold the tickets and collected the tax.

The COURT. Under this contract, as I understand it, Johnston has full control?

46 The WITNESS. Absolutely; we had nothing to do with it at all. Those moneys were collected and should have been turned over; that is all I know about it.

Mr. COUGHLIN. That is all.

HENRY G. D. CARR, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. McCoy:

Q. Mr. Carr, what is your occupation?

A. Cashier, State athletic commission.

Q. Do you receive reports of taxes for admission to boxing exhibitions?

A. I do.

Q. I show you here some papers containing a report—this is the report of the Central Manhattan Boxing Club.

The COURT. Just show it to him.

Q. Was that report filed with you, Mr. Carr?

A. No; that is not a report that is filed with me.

Q. How is that?

A. That is a different report; that is a report of the boxers and judges; it is the financial report that is filed with me—the financial report is on another paper.

Q. Could you pick out that financial report among these?

A. This is the report that is filed with me; that is the financial report [handing counsel paper].

Q. Does this financial report show the tax on admission tickets sold, due the State?

A. Yes.

Q. Will you show me that, please?

A. \$309—5 per cent.

Q. Do you know with whom this report is filed?

47 A. That is filed with the commissioners; that is for the purpose of checking up the boxers and judges.

Q. But that report was filed with your commission; is that so?

A. Yes, sir.

Q. And these reports come to you in due course, do they not?

A. They do.

Q. They become a part of the papers that are filed after each contest by the promoters?

A. Yes.

The COURT. Why do you say this was not filed?

The WITNESS. All those papers are filed with the commission, but the financial report is the only one I check.

The COURT. You are the secretary?

The WITNESS. I am the cashier. The only one I check is the financial report.

Q. Have you ever seen the signature of the defendant, James J. Johnston, on any reports filed that came to your attention in your official capacity with the State boxing commission?

A. I believe so.

Q. If I showed you what purports to be a signature, could you identify it?

A. In connection with the financial report?

Q. Yes; there is the signature of James J. Johnston; that paper was filed in your office as a part of the official papers required to be filed with your commission; is that so?

A. Yes.

Q. Is that the signature of James J. Johnston?

A. I didn't see him sign that paper.

Q. But have you ever seen him sign anything?

A. No; I don't think I have.

The COURT. You don't have to see a man sign if you are familiar with a man's signature.

48 The WITNESS. The papers are sent in all signed.

The COURT. Well, do you know whether that is the signature or not?

The WITNESS. I do not.

Q. But this is a report—

A. That is accepted by us as coming from the club; the Central Manhattan Boxing Club.

Q. Can you identify these papers as being filed with your commission?

A. These three papers here I can identify personally; this particular paper did not come into my hands [indicating].

Q. You were subpoenaed, or the commission was subpoenaed, to send over here or bring on the trial of this case all reports that were filed by James J. Johnston with your commission. Your commission has selected you as the witness to come over here with these reports?

A. Yes.

The COURT. You just stated a few moments ago, Mr. Witness, that this was one of the reports filed with your commission—not with you personally, but with the commission.

The WITNESS. That is correct.

The COURT. Then you can identify it as such?

The WITNESS. Yes.

Mr. McCoy. I ask to have these marked for identification.

(Marked "Government's Exhibits 3 and 4 for identification.")

Q. These are two similar papers for another date; can you identify those as being filed with your commission?

A. I can.

49 Q. What is the date?

A. April 13, 1921.

Q. And the others were March 2, February 28th, April 13th and April 15th.

The COURT. Which?

Mr. McCoy. The second set.

The COURT. If you don't keep them identified on the record and it becomes necessary to review the record, one would be perfectly blind as to what you are talking about.

Mr. McCoy. I ask to have those reports marked for identification.

(The second set referred to was marked "Government's Exhibits 5 and 6 for identification.")

Q. I show you here reports dated March 10th and March 12th and ask you if you can identify those as being filed with your commission?

A. Yes.

Mr. McCoy. I ask to have those reports marked for identification.

(Marked "Government's Exhibits 7 and 8 for identification.")

Q. Mr. Carr, I have here a report dated March 24th and a report dated March 26th; I show you these reports and ask you if you can

identify them as being submitted to your commission or filed with your commission?

A. I do.

Mr. McCoy. I ask that they be marked for identification.

(Marked "Government's Exhibits 9 and 10 for identification.")

Q. I also show you report dated March 31st and April 2nd, and ask you if you can identify them as being filed with your commission?

A. Yes.

50 Mr. McCoy. I ask that these reports be marked for identification.

(Marked "Government's Exhibits 11 and 12 for identification.")

Q. I show you also a report dated April 11 and ask you if you can identify those?

The COURT. What year?

Mr. McCoy. 1921.

A. Yes.

Mr. McCoy. I ask that these reports be marked for identification.

(Marked "Government's Exhibits 13 and 14 for identification.")

Q. I show you report dated May 3rd and May 6th and ask you if you can identify them as being filed with your commission?

A. Yes.

Mr. McCoy. I ask that these reports be marked for identification.

(Marked "Government's Exhibits 15 and 16 for identification.")

Q. I show you a report dated May 19th and May 20th and ask you if you can identify those reports as being filed with your commission?

A. I do.

Mr. McCoy. I ask that these reports be marked for identification.

(Marked "Government's Exhibits 17 and 18 for identification.")

51 Q. Government's Exhibit 3 reports that there was a State tax due of \$309; Government's Exhibit 4 reports that there was also a State tax due of \$309. Do you know whether those taxes were paid to your commission?

A. They were not; they were paid to the State treasurer.

The COURT. They are not payable to your commission?

The WITNESS. They are not payable to my commission.

The COURT. They make the reports to your commission, but they pay the money to the State treasurer?

The WITNESS. Yes, sir.

Q. Government's Exhibits Nos. 5 and 6 show that there was a State tax due of \$252.50; do you know whether this tax was paid to the State treasurer?

A. It was.

Q. These are taxes on admissions, are they not?

A. Yes.

Q. I show you Government's Exhibits Nos. 7 and 8, which show that a State tax was due of \$497, and ask you if those taxes were paid to the State treasurer?

A. Those taxes are one and the same thing; they were paid to the State treasurer, and also some additional tax.

Q. In other words, the tax in each one of these reports that I have shown you, these two reports are filed for one particular date?

A. One particular date.

Q. And the amount shown on each one of these reports is the amount of the admission tax which was due to the State for that contest, is that so?

A. Yes; sometimes more than that.

The COURT. How would that be?

The WITNESS. Where an error was made, in case there was an error made, and the club paid an additional tax.

52 Q. On Government's Exhibits Nos. 9 and 10, filed for the same date, it shows that a State tax of \$284 was due; was that tax paid?

A. What date? The date of the contract?

Q. March 24th.

A. \$291.85 was paid.

The COURT. What is the purpose of a double report every time or two different reports?

The WITNESS. One report contains all the information; it is not necessary to have two reports; there is only one report necessary to us, it is really the report of the boxers and judges, and on the back they happen to put that in. There is a financial report sent in separately to the cashier.

The COURT. That really requires only one financial report?

The WITNESS. One sent to us and one sent to the State treasurer.

Q. Government's Exhibits Nos. 11 and 12, two reports for the contest held on March 31st, show that a State tax of \$687.65 was due the State treasurer; was that paid?

A. That was paid, sir.

Q. Government's Exhibits 13 and 14, filed for the contest held April 7th, show that there was a State tax due of \$746.55; was that paid to the State treasurer?

A. That was paid to the State treasurer.

Q. Government's Exhibits Nos. 15 and 16 show that there was a State tax due of \$245.15; was that paid to the State treasurer?

A. \$252.50.

Q. So that this report was in error to the extent of a difference of \$7 and some odd cents?

A. The amount paid was \$252.50.

Q. How was that determined?

A. I determined it by checking up the accounts.

53 Q. In other words, this was not a correct report?

A. May have been some clerical error.

Q. The tax, however, was more?

A. The tax was \$252.50.

Q. Government's Exhibits Nos. 17 and 18, filed for the contest held May 19th, shows that a State tax of \$128.10 was due?

A. There was paid \$151.25 to the State treasurer.

Q. So that this report was not correct?

A. No.

Q. The amount of tax is more than this report sets forth?

A. Yes.

Mr. McCoy. That is all.

Cross-examination by Mr. COUGHLIN:

Q. Mr. Carr, do you know by whom these reports that you identified were made out?

Mr. McCoy. I object to that, your honor; the reports specifically show by whom they were made out.

The COURT. He could not, in the nature of things, know; the reports must show themselves by whom they were filed.

Mr. COUGHLIN. These were not offered in evidence yet.

Mr. McCoy. No; they are only marked for identification.

Q. Do you know, Mr. Carr, who filed these returns with the commission?

A. They are filed by an officer of the club; some officer of the club; we recognize nobody but clubs, incorporated clubs.

Q. Is there a regulation of the commission that requires any specific person to file this return?

The COURT. Just a moment. What do you mean by that?
54 Do you mean to present it for filing or to make it out and subscribe it?

Mr. COUGHLIN. Subscribe it.

The COURT. In whose name must a report be made?

The WITNESS. An officer of the corporation.

The COURT. That specifically provides that the corporation must make a financial report to you?

The WITNESS. Yes, sir.

The COURT. As to each exhibition?

The WITNESS. Always signed by an officer of the corporation.

By Mr. COUGHLIN:

Q. Among all the papers which you brought here under subpoena from the United States attorney did you bring the certificate of incorporation which is required to be filed by you?

Mr. McCoy. I don't think there is any certificate of incorporation required to be filed by Mr. Carr.

Mr. COUGHLIN. I withdraw the question.

The WITNESS. I brought all the papers connected with it.

Q. As an official of the New York State Boxing Commission, will you tell us whether it is necessary for an applicant for a license to conduct boxing exhibitions in New York State to file with the State commission a copy of its certificate of incorporation?

A. We do.

Q. Have you with you to-day the copy of the certificate of incorporation filed with you by the Central Manhattan Boxing Club?

A. Yes.

55 Q. Do you know whether it is necessary for any applicant for a permit to hold boxing exhibitions in New York State to

file with the New York State Commission an application for such license and permit?

A. Application is made to the commission.

Q. Have you with you to-day the original application made on behalf of the Central Manhattan Boxing Club for a license?

A. I believe so; yes.

Q. It is necessary for an applicant for a license or permit to hold boxing exhibitions in New York State to file with the New York State Boxing Commission a copy of any lease under which it intends to operate?

A. Yes.

Q. Have you with you to-day the copy of the lease which was filed with you pursuant to that regulation by the Central Manhattan Boxing Club?

A. I think so.

Mr. COUGHLIN. As soon as we can find those papers I will offer them in evidence.

The COURT. Well, the witness very likely can find them for you.

The WITNESS. This is the application for a license by the Central Manhattan Boxing Club, Inc.

Q. Will you please detach the three papers that I have called for, the certificate of incorporation, the lease, and the application?

A. That is the application for the license dated November 16, 1920, the money filed with us November 16, 1920, of the Central Manhattan Boxing Club, Inc.

Mr. COUGHLIN. I offer that in evidence.

Mr. McCoy. You testify that this was filed with your commission.

The WITNESS. Yes, sir.

56 Mr. McCoy. I have no objection.

(Marked "Defendant's Exhibit B.")

The COURT. Now, he also asks you for the certificate of incorporation and the lease, if you can find them there.

The WITNESS. This is the lease of the Manhattan Casino, Inc. [producing paper].

Mr. COUGHLIN. I offer that in evidence.

Mr. McCoy. What does this mark here represent [indicating]?

The WITNESS. I do not know.

Mr. McCoy. Does it represent that it had been cancelled, void, or anything of that sort?

The WITNESS. I couldn't tell you exactly whether that is so or not; that paper did not come through my hands.

The COURT. Is this the original paper?

The WITNESS. The lease—H. S. Lyons, secretary of the license committee, handles these particular papers; he receives these papers; they don't come to me.

Mr. McCoy. Well, I would like to know a little more about this lease before it goes in evidence; this is simply a lease from the

Manhattan Casino to the Aathletic Club of America; these two have nothing to do with the Central; Manhattan Boxing Club.

The COURT. If you object to it and it does not relate to this matter, well and good—he may have brought the wrong paper.

Mr. McCoy. We are dealing now with the Central Manhattan Boxing Club, and that does not appear in that paper at all.

Mr. COUGHLIN. Your honor, I asked the witness if he had with him the lease filed by the Central Manhattan Boxing Club.

57 The COURT. But he has produced a paper that evidently is a mistake—do you find another lease there?

The WITNESS. There is an assignment of a lease here also from the Manhattan Athletic Club to the Central Manhattan Boxing Club, Inc., dated November 23, 1920.

Mr. McCoy. That is the paper we want.

The COURT. That would be very likely just the paper that you want.

Mr. COUGHLIN. These two papers taken in conjunction, your honor, show the chain.

The COURT. That may be.

Mr. COUGHLIN. I offer them both in evidence.

Mr. McCoy. Well, now, this contains an application for a license. What do you want to get in evidence, the assignment of the lease?

Mr. COUGHLIN. The assignment of the lease and the lease.

Mr. McCoy. Well, here is the original lease between the Manhattan Casino and the Manhattan Athletic Club. Now, there are a number of papers included in this folder here.

Mr. COUGHLIN. I am offering in evidence the assignment and the lease.

Mr. McCoy. I have no objection.

(Marked "Defendant's Exhibit C.")

The WITNESS. This paper here is the certificate of incorporation of the Manhattan Athletic Club of America, Inc.; some of those papers are papers that we require to see before we would issue the license.

58 Q. Mr. Carr, the certificate of incorporation of the Central Manhattan Boxing Club, Inc., would necessarily have to be filed with your commission before a permit or license would be issued to the Central Manhattan Boxing Club, Inc.?

Mr. McCoy. I object to the form of the question.

Mr. COUGHLIN. He is not my witness.

The COURT. You have been asking this witness right along questions of law; you have been asking him to state to you the requirements of the statute, and there is never any necessity of asking a witness what the statute requires. The question you are now putting to him would be answered by the statute, and all you need is to repeat the statute.

Mr. COUGHLIN. I submit that that is a regulation of the commission and not a statute.

The COURT. Well, if it is a regulation of the commission, then the regulation of the commission is the best evidence and not the evidence of the witness.

Mr. COUGHLIN. I withdraw my last question.

Q. This certificate of incorporation which I have in my hand purports to be the certificate of incorporation of the Manhattan Athletic Club of America. Have you with you to-day a certificate of incorporation of the Central Manhattan Boxing Club, Inc., which was filed with the New York State commission?

A. It should be among those papers—I presume it is.

Mr. McCoy. Would you be able to locate it, Mr. Carr? I have not been all through these papers, and I would like to assist counsel.

Q. This paper is one which was filed with the New York State Boxing Commission?

A. That is a copy of the one you have there already—application for license of the Central Manhattan Boxing Club—you have the application there already, the original, the application for the license; this is a copy of that.

Q. Well, included in that folder that you have there, is there a certificate of incorporation of the Central Manhattan Boxing Club?

Mr. McCoy. I will accept the paper as authentic as among the papers that were filed.

The WITNESS. Yes; this is a certificate of incorporation.

Mr. McCoy. May I see that, please?

The WITNESS. It is a copy.

Mr. COUGHLIN. I offer it in evidence.

(Marked "Defendant's Exhibit D.")

(At this point Mr. Coughlin read defendant's Exhibit B to the jury.)

Mr. McCoy. Your honor, it has been admitted by the attorney for the Central Manhattan Boxing Club that they did make application for this license, and a reading of a lengthy paper like this seems to me is taking up the time of the court unnecessarily.

The COURT. Well, Mr. District Attorney, you are just taking up time, because he has already completed it; you should have interposed the objection earlier.

Mr. COUGHLIN. That is all.

JOHN J. T. SMITH, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. McCoy:

Q. Are you a notary public, Mr. Smith?

A. I am.

Q. I hand you Government's Exhibit No. 3, which has on it the signature of James J. Johnston and your signature as notary public; can you tell me whether that is the signature of James J. Johnston?

A. Yes, sir.

Mr. McCoy. I offer this paper in evidence.

The COURT. He hasn't told you whether it was.

Q. Is it the signature of James J. Johnston?

A. It is.

Mr. COUGHLIN. No objection.

(Government's Exhibit No. 3 for identification received in evidence.)

Q. Now, this report, it shows that a Federal tax of \$618 is due; that is a report that is signed by Mr. Johnston?

A. Yes..

Q. That is all, Mr. Smith, for the moment, unless you acted as notary as to any other papers.

A. I don't know; I think you said, Mr. District Attorney, that you wanted me to identify some papers signed by Mr. O'Brien.

Q. I just want you to identify the papers that you acknowledged as notary public.

A. Yes, sir; I acknowledged that one; I can't say that there were any others.

Q. Apparently not; but in case I come across them I will have to recall you, if you will remain here.

A. Yes.

61 LOUIS LIEBGOLD, called as a witness on behalf of the Government, being duly sworn, testifies as follows:

Direct examination by Mr. McCoy:

Q. What is your occupation, Mr. Liebgold?

A. Physical director.

Q. Were you ever employed by the State athletic commission?

A. Yes, sir.

Q. In what capacity?

A. Boxing inspector.

Q. Who were you employed by?

A. The State boxing commission; I was employed then as a boxing inspector.

Q. Mr. Liebgold, did you attend the contest at Manhattan Casino held by the Central Manhattan Boxing Club on the date of February 28, 1921—I show you this to refresh your recollection?

A. Yes.

Q. Attached to that report, Government's Exhibit 4; is that a report from you showing the number of tickets that were sold at that contest and is that your signature and is that your report?

A. Yes, sir.

Q. How did you determine the number of tickets sold at that contest?

A. Generally take a copy of the statement made by the counters on that night.

Q. Do you know who the counters were that night?

A. No, sir.

Q. Do you know the defendant, James J. Johnston?

A. Yes, sir.

Q. Did you see him that night?

A. Around the building I did.

Q. Did you see him in the box office?

A. No, sir.

Q. Well, do you know who the checkers that you worked with were employed by?

A. I guess they were employed by—

62 Q. No; do you know as a matter of fact?

A. No; I do not.

Q. Now, will you state to the jury how you determined the amount of tickets sold?

A. When the counter would count up the tickets, some one of those counters would make a report; I merely took a copy of that report and forwarded it to the commissioners, either that night or the next day, which was customary for a boxing inspector to turn in a report of the contest held that night.

Q. And the number of tickets sold?

A. The number of tickets sold, as they were counted up by the counters, I would take a copy and forward it to the commissioners.

Q. And you would send the amount of admissions received that night to the boxing commission, is that so?

A. Yes, sir.

Mr. McCoy. I offer this paper in evidence.

Mr. COUGHLIN. No objection.

(Government's Exhibit 4 for identification received in evidence.)

Mr. McCoy. That is all for the present, Mr. Liebgold, if you will wait for ten or fifteen minutes I may have to call you back again.

JOSEPH A. O'BRIEN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. McCoy:

Q. Are you a notary public, Mr. O'Brien?

A. Yes.

63 Q. I show you Government's Exhibit 8 for identification; this report shows that there is a Federal tax due the Government of \$707.20, and it is signed by James J. Johnston, and you appear to be the notary public; I want to know if that is James J. Johnston's signature?

A. Yes.

Mr. McCoy. I offer it in evidence.

Mr. COUGHLIN. No objection.

(Government's Exhibit 8 for identification received in evidence.)

Q. I show you another report in which there appears to be a Federal tax due the Government.

A. I don't know anything about that.

Q. The amount is \$505 and this report is signed by Joseph M. O'Brien, and your name appears to be the notary public acknowledging that signature; is that Joseph M. O'Brien's signature?

A. Yes.

Mr. McCox. I offer this in evidence.

(Government's Exhibit 6 for identification received in evidence.)

Q. Mr. O'Brien, I show you another report marked for identification here, Government's Exhibit No. 9, in which there appears to be a Federal tax due the Government of \$568, signed by Joseph M. O'Brien; your name appears to be the notary public; is that Joseph M. O'Brien's signature?

A. Yes; I took that as notary public.

Mr. McCox. I offer that in evidence.

Mr. COUGHLIN. No objection.

(Government's Exhibit No. 9 for identification received in evidence.)

64 Q. I show you another report, Government's Exhibit 11, for identification, in which there appears to be a Federal tax due the Government of \$1,375.30, signed by Joseph M. O'Brien, and your name appears as notary; is that his signature?

A. Yes.

Mr. McCox. I offer this in evidence.

(Government's Exhibit No. 11 for identification received in evidence.)

Q. You have acknowledged the signature of Joseph M. O'Brien on three or four occasions, have you not?

A. Yes.

Q. You can identify his signature when you see it, can you not?

A. Only from my own.

Q. Well, I have just submitted to you three reports in which you acknowledged his signature.

A. There is no doubt that the signature is Joseph M. O'Brien's, as I knew the signature of Joseph M. O'Brien.

Q. I show you here a report, Government's Exhibit No. 15 for identification, in which \$490.30 appears to be due the Federal Government, and that is signed by Joseph M. O'Brien; can you recognize that signature?

A. I couldn't testify as to whether that was the Joseph M. O'Brien that signed the same ones before me.

Q. Well, I am referring to the signature.

A. It looks similar, as far as I know.

The COURT. How can you tell any better to-day the Joseph M. O'Brien that you certified to, and this one, unless you know the signature?

The WITNESS. Well, I know the man and I know who he was connected with and some of the acknowledgments I think I filled out the position he occupied.

65 The COURT. Then you ought to be able to testify to these.

Q. This is the same report signed with his handwriting?

A. Well, I say it looks the same as the signature on the other instrument that you showed me.

Q. I show you another report, Government's Exhibit No. 13, in which there appears to be a Federal tax due the Government of \$1,493.10, signed by Joseph M. O'Brien; does that appear to be the same signature?

A. That looks similar to the other exhibit.

Mr. McCoy. I offer these two reports in evidence, Nos. 13 and 15 for identification.

Mr. COUGHLIN. No objection.

(Government's Exhibits Nos. 13 and 15 for identification received in evidence.)

Q. I show you another report, Government's Exhibit 17 for identification, in which there appears to be \$256.20 due the Federal Government, signed by Joseph M. O'Brien; does that appear to be his signature?

A. That looks similar to the other.

Mr. McCoy. I offer that in evidence.

(Government's Exhibit No. 17 for identification received in evidence.)

Mr. McCoy. That is all.

Mr. COUGHLIN. No questions.

66 DANIEL H. SKILLING, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. McCoy:

Q. Were you a deputy commissioner of the State athletic commission?

A. I was.

Q. On April 13, 1921?

A. Yes, sir.

Q. I show you here a report marked "Government's Exhibit 5 for identification," to which is attached the report bearing your signature; can you identify that report?

A. Yes.

Q. Is that your report?

A. That is my report.

Q. Will you state to the jury how you arrived at the figures in the report?

A. After each contest we would have the men go in the office and count all the tickets—

The COURT. Speak up louder.

The WITNESS. After each boxing contest we would have the men in the office count the tickets, the sold tickets; I supervised the counting after the sold tickets were counted, then I would supervise the counting of the unsold tickets, and turn in this report to the commission, who would have the printed report, and they could tell whatever tickets were missing and tax the club for those tickets.

Q. What was the amount of the admissions received that night according to your report?

A. \$5,050.

Q. That was the amount of admissions paid?

A. The tickets in the box office.

Mr. McCoy. I offer this report in evidence.

Mr. COUGHLIN. No objection.

(Government's Exhibit No. 5 for identification received in evidence.)

Mr. McCoy. I believe that is all.

67 LEONARD W. McCLAUREY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. McCoy:

Q. Mr. McClaurey, were you employed by the State athletic commission in 1921?

A. Yes.

Q. In what capacity?

A. Inspector.

Q. Did you attend the boxing contest held at 158th Street and Eighth Avenue on March 20, 1921?

A. Who were the principals—I don't recall the date.

Q. Well, I will submit this paper to you to refresh your recollection; now state to the jury how you obtained that, how you arrived at those figures.

A. Why, I got hold of the tickets that were used, the sold tickets, and deducted those from the unsold tickets and that was verified, of course, by count, and the count was always supervised. That is the way this report was arrived at, to be sent to the commission when they checked back my report to see that it confirmed the printed report. That is, the tickets were all printed, and the used tickets, that is, the used and unused, it jibed with the tickets that were printed.

Q. Who did you work with, Mr. McClaurey, to get at these figures?

A. I worked with two different inspectors; I attended that place twice.

Q. Did you ever work with any of the employees of James J. Johnston, the defendant?

A. No.

Q. Did you work with the ticket sellers?

A. No.

Q. You just worked with your own inspectors, the inspectors of the commission?

A. Yes.

Q. I show you another report, Government's Exhibit 10 for identification, and ask you if you made out that report?

A. Yes; that is mine.

Q. Will you state the amount of admissions that were paid on that?

A. \$4,071.

68 Q. The amount of admissions received?

A. Yes.

Mr. McCoy. I offer these reports in evidence.

Mr. COUGHLIN. No objection.

(Government's Exhibits 7 and 10 for identification received in evidence.)

MICHAEL WIEDER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. McCoy:

Q. What is your occupation, Mr. Wieder?

A. Deputy clerk, United States Internal Revenue.

Q. It was a part of your official duties, Mr. Wieder, to investigate amusement enterprises, to see whether or not they have made proper returns to the Bureau of Internal Revenue for admission taxes, isn't that so?

A. Yes, sir.

Q. Did you have occasion to investigate the affairs of the Central Manhattan Boxing Club?

A. I did.

Q. Why is it that you had to investigate it?

A. Well, there was no special reason. I have charge of all the admission taxes in my district about 110th Street, and the Central Manhattan Boxing Club conducted their affairs at 158th Street and Eighth Avenue, and it is in my district, and I was sent there by the chief, Mr. Carew, who must have had a complaint on it, something to that effect—that I don't know.

Q. You don't know any reason why you were sent there to investigate?

A. That I don't know.

69 Q. As a matter of fact, you did go there and investigate, did you not?

A. Yes.

Q. Will you state to the court and jury what you found upon investigation?

A. Well, I found no one there that I could talk to concerning the Central Manhattan Boxing Club, and from my investigations I understood that Mr. Johnston was the one that was running the corporation, and I addressed a letter to Mr. Johnston, to some address that I was told by someone in charge of the Casino, and I received no answer. I then went down to the State boxing commission to get the amounts paid by the club to the State, which is 5 per cent of the gross receipts.

Q. But did you first find out that there had been any return?

A. Before that I first went down to our office down in the custom-house, where we keep our records, to find out whether the Central Manhattan Boxing Club had paid a tax for the months of March, April, and May, during which time I understood they had been

running boxing bouts. I found that no payments had been made. The only payment that had been made was the one in November.

Q. Did you find that a return had been filed?

A. I found that none had been filed.

Q. So in the absence of any return having been filed, they couldn't have paid any tax?

A. No.

Q. They first had to file a return?

A. You pay the tax at the time you file the return.

Q. But the filing of the return—

A. You file the return and pay the taxes the same time.

Q. And filing a return is a prerequisite to paying?

A. You must file the return and pay the tax at the same time.

The COURT. Had a return been made for November?

70 The WITNESS. Yes, the tax had been paid.

The COURT. But no returns for any subsequent period?

The WITNESS. No returns for any subsequent date.

Q. Do you know who paid the tax for the November contest?

A. No.

Q. Do you know whether any tax was paid to the Government for the months of February, March, April, and May, 1921?

A. I know from my investigation of the records that none has been paid.

Q. Did you then go to the State boxing commission to find out whether or not a State admission tax had been paid?

A. Yes.

Q. And did you find out there that a State admission tax had been paid.

A. Yes.

Q. What were the amounts that you found? First, did you get them?

A. Yes, I got the amounts.

Q. You got the amounts from the records on file?

A. From Mr. Carr, the cashier, I got them.

Q. Could you identify the records if they were shown to you, from which they were made?

A. Mr. Carr gave them to me from his book that he kept.

The COURT. Mr. Carr gave you a memorandum?

The WITNESS. He gave me a memorandum from his cash book of the amounts received.

The COURT. And the Federal tax is just double the State tax?

The WITNESS. Yes.

Q. The State tax is a tax of 5 per cent?

A. Yes.

Q. And that tax is to be paid out of the admission fee, isn't that so?

A. The State tax?

71 Q. The State tax is paid out of the admission fee?

A. I don't know the regulations of the State; I understand that the tax is 5 per cent on the admissions; I don't know what the regulations are.

Q. But the Government tax is separate and distinct from the admission fee?

A. Yes, 10 per cent.

Q. 10 per cent in addition to the admission fee?

A. Yes.

Q. Mr. Wieder, I will submit to you a report; is that your report?

A. Yes, sir.

Q. That report was made in your official capacity after your investigations?

A. Yes, sir.

Q. Will you state what amount you found to be due to the Federal Government for contests held in the months of February, March, April, and May, 1921?

A. For the month of February I found that \$618 was due; the tax was \$618. The penalty for failure to file the return was \$154.30, making a total of \$803.30 due the Government for the month of February.

Q. The penalty attaches if the return is not filed?

A. If not filed on time.

Q. And the specified time for filing the return is the last day of the succeeding month?

A. Yes, sir.

Q. In which the tax is due?

A. Collected.

Q. Now, what did you find for the month of March?

A. For the month of March the tax should have been \$2,937.30; 25 per cent would be \$734.32; 12 per cent additional, making it \$146.86, making a total of \$3,818.48 for the month of March. For the month of April the tax due was \$1,998.10; the penalties were \$499.52 and \$99.90, making a total of \$2,597.52. For the month of May the tax was \$850.50; the penalties were \$212.62 and \$42.32, making a total of \$1,105.44.

72 Q. What is the grand total of the amount of tax that you found to be due the United States Government for admissions to contests held by the Central Manhattan Boxing Club during the months of March, April, and May?

A. Including penalties?

Q. Including penalties.

A. \$8,324.84.

Q. And those taxes were never paid to the United States Government, is that correct?

A. Yes.

Mr. McCox. That is all.

Cross-examination by Mr. COUGHLIN:

Q. Mr. Wieder, do you know whether there has been filed in your office any notice in compliance with Regulation 43, article 64, from the office of the Internal Revenue Department, notifying the collec-

tor that a lease had been made by the Central Manhattan Boxing Club to James J. Johnston, and that he agreed to be responsible for the payment of the admission tax?

A. No, sir.

Mr. MCCOY. I object to that question; he is not presumed to know anything about leases being filed; he is a Government internal revenue collector.

Mr. COUGHLIN. I have a right to ask him if it is within his knowledge.

The COURT. He states he doesn't know.

The WITNESS. I don't know of any such notification.

Q. If any such notification had been filed, would you know about it?

A. No, sir.

Q. Have you examined the complete file of all the papers relating to the Central Manhattan Boxing Club?

A. Only relating to the payment of taxes.

Mr. COUGHLIN. That is all.

73 JOSEPH STEINBERG, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. MCCOY:

Q. What is your occupation, Mr. Steinberg?

A. Deputy collector, United States Internal Revenue Department.

Q. In your capacity as deputy collector of internal revenue, you have occasion to examine the reports and to know whether or not admission taxes have been paid at various amusement enterprises?

A. Well, I do not exactly examine the reports, but we have a record of knowing whether a tax has been paid or not; we have a record of that in the office.

Q. Do you know whether or not the Central Manhattan Boxing Club has ever paid a tax to the United States Government for admissions?

A. For what period?

Q. For the period of February, 1921, to May 19th, 1921.

A. There is a record of a part payment of a tax amounting to \$250 for that period.

Q. What was the amount due the United States Government for that period?

A. The tax amounted to \$6,300 and some odd, and there was 25 per cent and a 5 per cent penalty assessed.

Q. Making a total amount of taxes due of what?

A. I don't remember the total.

Q. If I show you a report of Mr. Wieder, would that refresh your recollection?

A. Yes—a total of \$8,324.84.

The COURT. Are you able to say who made this partial payment of \$250?

74 The WITNESS. No, I couldn't say who made the payment; there is a payment in the name of the Central Manhattan Boxing Club of \$250.

The COURT. Wasn't that in the previous November?

The WITNESS. No, it is not. It is not included, the previous payment; it was made several months later—in fact, quite a few months later.

Q. When was it made?

A. About August 8th or 9th.

The COURT. Of this year?

The WITNESS. Of this year.

Q. And you don't know who made that payment?

A. No, I don't know who made that payment. I have a record there and it is noted as a part payment for the Central Manhattan Boxing Club and amounts to \$250.

Q. And there is a balance due?

A. A balance due of the difference between \$8,000 and \$250.

Q. Which has never been paid?

A. Which has never been paid.

Mr. McCoy. That is all.

Cross-examination by Mr. COUGHLIN:

Q. Mr. Witness, are you familiar with the records of your office concerning notices filed by lessors, to the effect that a lease has been made of a place where admission taxes may become due, and giving the name of the lessee for the purpose of advising the collector?

A. There is a particular form, I think I know what you refer to, it is marked notification by the lessor that the lessee will be responsible for the tax.

75 Q. Mr. Witness, I ask you if you are familiar with the records of your office?

A. I am familiar with the records of the office concerning that form.

Q. Do you know whether any such notification has been filed with your office by the Central Manhattan Boxing Club, naming James J. Johnston as the lessee, and the person to be held responsible?

A. No such form was filed.

Mr. COUGHLIN. That is all.

Redirect examination by Mr. McCoy.

Q. Mr. Steinberg, when a form of that sort that you have just mentioned is not filed, what does that amount to; is it a violation?

A. It would be a violation, positively.

Q. Is it serious?

The COURT. Does the law require it, or the regulations?

The WITNESS. The regulations require it; we would call it a technical violation, and it carries a fine of \$10 or so on the part of the party who fails to file it.

Q. But, in any event, the law specifically says, or the regulations specifically say, that the one who collects the tax, actually receives the money, is the one who is responsible for paying that tax?

A. Yes, that party would be responsible for the payment of that tax.

Q. Regardless of whether any notice has been given to the Bureau of Internal Revenue, as to whether a lessee is in charge of a building?

A. Regardless of that fact.

76 The COURT. I suppose, under the law, as soon as this tax is collected, the tax being a separate thing from the admission fee, as soon as that tax is collected by anyone, it is property of the United States.

The WITNESS. It is the property of the United States. There are certain taxes to be collected by parties specified under certain sections of the law; in fact, they really become agents of the Government for the collection of that tax, and the tax on admissions is one of those. There were several others; for instance, the tax on transportation.

Q. And the luxury tax is another?

A. Section 904, I think it is.

The COURT. And whoever collects those taxes becomes an agent of the Government?

The WITNESS. Really become an agent of the Government. That is proven by the fact that if that party is unable to collect the tax the Government will aid him, and, in fact, collect it for him.

By Mr. McCoy:

Q. But as soon as he collects that tax it never becomes his money, does it, it is always the Government money?

A. It is the Government's money. There is a corresponding duty on the part of the party who is paying for admissions also to pay that tax, and if he refuses to pay it he is violating the law.

Recross-examination by Mr. COUGHLIN:

77 Q. Mr. Steinberg, on that regulation, Article 64, concerning notification by a lessor, is it not a fact that there is included in that regulation a statement to the effect that where such notice is not given, then the tickets must be the tickets of the lessor; are you familiar with that regulation?

A. No.

Q. I show you this to refresh your recollection; can you now say?

A. Well, as I read this section, the lessee is responsible for the collection of the tax and the lessor has the privilege of filing this form to relieve himself.

Q. Will you answer my question concerning the tickets?

The COURT. But the failure to pay the tax makes the party receiving it responsible to the Government.

The WITNESS. The party collecting the tax is the one responsible to the Government—now, what is your question, please?

Q. Is it not a part of that same regulation that where no such notification is made, then it is the duty of the lessor to use his own tickets?

A. No; as I read this section, if the lessor assumes the duty of paying this tax and collecting it, then his ticket must be used.

Q. That is your interpretation?

A. Here it is right here, if the lessor assumes such responsibility his ticket shall be used.

Q. Is that your recollection of the regulations; is that correct in your estimate?

Mr. McCoy. It is not his recollection; it is the regulation itself.

The WITNESS. I am reading from this section, article 64.

Mr. COUGHLIN. I am handing the witness this section to refresh his recollection.

78 The COURT. But you have asked him what the regulation was and he is reading from it.

Mr. COUGHLIN. That is all.

Mr. McCoy. That is the Government's case, your honor.

Mr. COUGHLIN. The defendant moves to advise the jury to acquit the defendant on the ground that the Government has failed to establish a case against him; that the evidence is insufficient to warrant a conviction.

On this motion I would like to call to your honor's attention the fact that there has been absolutely no proof presented here that the defendant Johnston received any part of the moneys paid as an admission or as admission taxes for the exhibitions concerning which this charge is brought.

All of the statutes, the three statutes upon which they base the liability of Johnston, require that he at some time receive the money, the tax.

As to the embezzlement charge, he cannot be charged with embezzlement of Government funds unless you have some evidence that he received Government funds. I maintain that the Government has failed, by any evidence, to show that Johnston received any of the funds that were paid for admission taxes and that that failure is sufficient to warrant the jury to acquit.

The COURT. I think your motion is ignoring a number of these reports that have been put in evidence here, as well as certain of the oral evidence. Of course, you understand that if I am one that

controls a transaction, and the money is paid over to one
79 that I have directed to receive it, I am responsible for that money, and if it is used, at my direction, for a purpose other than that which is required under the law that it shall be used—in this instance, for the payment of taxes—I am the guilty party, because it has been done under my direction. I do not need to do this directly or individually myself.

There are a number of reports here that were put in under the name of Mr. Johnston, and others under the name of Mr. O'Brien, whom the evidence tends to show was Mr. Johnston's employee, showing, upon their face, the receipt of an amount of money as and for the very tax that is involved here. Now, upon the face of those reports this money went into the hands of Johnston; he cannot avoid the responsibility because he may have turned over to somebody else and directed someone else to make use of them other than that which the law destined for them.

The motion will be denied.

Mr. COUGHLIN. Exception. The defendant also excepts to the remarks of the court in ruling on this motion, on the ground that they are prejudicial to the defendant and unwarranted.

The defendant rests.

80 (Mr. Coughlin sums up to the jury on behalf of the defendant.)

(Mr. McCoy sums up to the jury on behalf of the Government.)

(Thereupon the court instructed the jury without exception on the part of defendant.)

(The jury retired and returned with a verdict of guilty on all twelve counts, earnestly recommending that the defendant be given the mercy of the court.)

Mr. COUGHLIN. Your honor, the defendant moves to set aside the verdict, for a new trial, and to arrest judgment on the ground that the verdict is contrary to law and contrary to the evidence.

The COURT. Each of which motions will be denied.

Mr. COUGHLIN. Exception.

(Sentence deferred until Thursday, November 9th, 1921.)

Colloquy between court and counsel

NEW YORK, December 3, 1921.

Mr. SAGER. As your honor knows, I did not represent the defendant at the trial and he has not been able to procure a transcript, but the money we have collected we have paid in.

The COURT. You do not need any transcript.

Mr. SAGER. I do not know what occurred on the trial, but I want to make two motions, one for an arrest of judgment, first on the ground that the indictment does not state or allege an offense

81 under the United States laws or statute of the United States, and that neither count of the twelve counts of the indictment states an offense against the United States Government or under the laws or statutes of the United States.

I also want to make a motion to set aside the verdict.

The COURT. Well, I would make one at a time.

Mr. SAGER. All right, your honor.

The COURT. What is your other motion?

Mr. SAGER. A motion to set aside the verdict and grant a new trial on the ground that the verdict is against the evidence and

against the law, and on the further ground that the court erred in his charge to the jury, and that counsel for the Government—

The COURT. Of course you understand that a motion on that ground cannot rest where there was no exception taken to the charge.

Mr. SAGER. Well, I do not know what happened.

The COURT. Well, I can tell you there was no exception taken at all.

Mr. SAGER. Well, I want to get it in the record, anyhow.

The COURT. Yes.

Mr. SAGER. On the ground that counsel for the Government made improper remarks to the jury in his summation, and especially with reference to this statement, in effect, that a certain witness named Joe O'Brien had been subpoenaed to attend and had not appeared, and that the defendant had failed to put him on the stand.

I simply want to get the formal motion on the record.

82 The COURT. Your motions will be denied. Exceptions.

Judgment

NEW YORK, December 5, 1921.

The COURT. The judgment of the court is that the defendant be imprisoned for the period of sixty days, and that he pay a fine in the sum of \$500.

GOVERNMENT EXHIBIT 1

11/3/21

Agreement, entered into this 26 day of November, nineteen hundred and twenty, by and between Central Manhattan Boxing Club, Inc., duly incorporated under the laws of the State of New York, party of the first part, and James J. Johnston, party of the second part:

WITNESSETH:

For valuable consideration and the sum of one dollar herewith paid in hand to each other by the parties to this agreement, the receipt whereof is hereby acknowledged, it is hereby agreed as follows:

The party of the second part being desirous to exclusively conduct boxing contests as the agent, matchmaker, and manager of the Central Manhattan Boxing Club under the charter and license held by it for the period of one year from the date hereof, and the party of the first part being agreeable to such exclusive arrangement, it is understood by the parties hereto that the following arrangement shall hold good during the life of this agreement.

83 The party of the second part agrees to pay to the party of the first part \$750.00 a month, except that for the months of

July and August the sum of \$500.00 is to be paid, for the aforesaid exclusive arrangement.

The party of the second part agrees to hold at least one boxing contest each month, and agrees to pay to the party of the first part \$400.00 one week prior to the day set for each contest, and \$350.00 on the evening of the contest, except that in July and August the sum of \$100 is so payable, or the said sums are due and payable in full on the last day of the month if no contest is held.

In the event of the postponement of any boxing contest from a date mutually agreed upon in any month, \$250.00 is to be paid to the party of the first part by the party of the second part; and provided a later date in the same month or in the first week of the ensuing month may be had, for which the said sum of \$750.00 is to be paid as above set forth.

It being at all times understood and agreed that the party of the second part agrees to hold a boxing contest each calendar month, so that if a contest is arranged for a particular day of a month and it is not held during that month or in the first week of the ensuing month, then and in that event the sum of \$500, in addition to the aforesaid sum of \$250.00 is due and payable to the party of the first part, or if no date for a contest is set in a month, then the sum of \$750.00, except in the months of July and August when the sum of \$500.00 is to be paid to the party of the first part for the aforesaid exclusive right herein given to the party of the second part.

The party of the second part also agrees to pay the State tax of 5% and the Federal tax of 10%.

84 It is further agreed that the party of the second part shall pay the premium of the bond to be given by the club and the license fee of \$750.00. The party of the second part agrees to reimburse the party of the first part for any monies necessarily paid out arising out of a penalty imposed by the commission for the failure to comply with the rules and regulations of the commission, or the provisions of the State boxing law, or in contesting any such proceeding or action brought by the commission or any agent or employee of the party of the second part.

It is further understood and agreed that in the event of the party of the first part exercising its power to terminate this contract, that it shall pay to the party of the second part the pro-rata amount of the premium on the bond and license fee for the unexpired term of this contract.

More than one contest may be held in any one month and the sum of \$500 is payable—\$400.00 in advance as above set forth and \$100 on the evening of the contest.

The party of the first part agrees, in consideration of the above, to furnish the large hall of the Manhattan Casino, lighted and heated, and with seats, boxes, and ring all arranged for a boxing contest, as heretofore used.

It is further understood and agreed that the ticket takers and ticket sellers employed by the party of the second part shall be paid

by him and also the contestants and officials, i. e., referee, physicians, timekeepers, announcers, ushers, etc., and the necessary gloves and all other expenses incurred in the conduct of said contest shall be paid and furnished by the party of the second part.

It is further agreed that each contract or agreement made with contestants, officials, ticket sellers, and other help employed by the party of the second part, shall specifically provide that payments of all moneys shall be made by the party of the second part and that he shall be solely responsible.

All dates for conducting boxing shows must be mutually agreeable to the parties hereto.

This contract shall remain in force during the life of the present license held by the Central Manhattan Boxing Club, Inc., but may be terminated by either party by the giving of ninety days' written notice.

The party of the second part is to have entire charge of the handling and selling of all tickets and shall have exclusive control of all complimentary and press tickets.

This contract is not assignable by the party of the second part.

It is hereby mutually agreed between the parties of the first part and the parties of the second part of this contract that the parties of the second part agree to deliver or to give to the parties of the first part as many complimentary tickets as is consistent with the amount permitted by the rules and regulations of the Boxing Commission of the State of New York, inclusive of 3 balcony boxes and one ring side box

CENTRAL MANHATTAN BOXING CLUB, INC.,
By ELBERT O. SMITH, *Secretary*.

In presence of:

F. C. HAYDEN.

JAMES J. JOHNSTON. [L. S.]

86 The above typewritten insert was drawn up in the office of and at the request of J. J. Hagan and was made a condition to his entering into his agreement to guarantee performance by party of second part.

J. J. JOHNSTON.

Witness,

GOVERNMENT EXHIBIT 2

11/4/21

MAY 19, 1921.

Received from James J. Johnston nine hundred and fifty-two dollars in full payment to date for Manhattan Casino.

If check goes through.

\$952 00/00.

F. C. HAYDEN,
For Cent. Man. Box. Club.

GOVERNMENT EXHIBIT 3

11/4/1921

New York State Boxing Commission

Corporation report after contest

This report must reach the boxing commission not later than 72 hours after the contest herein described. This report must be type-written.

Report of Central Manhattan Boxing Club, corporation of exhibition held at Manhattan Casino, 155th Street & 8th Ave., New York City, N. Y., on February 28th, 1921

The following are the names of all boxers taking part, duration of bouts, decisions, payments made to boxers:

Boxers	License No.	Rounds	Decisions	Payments to boxers
Jimmy Kane.....	187	10	Won.....	\$500.00
Packey Hommey.....	1231	10	Lost.....	400.00
Charley Beecher.....	136	10	Won.....	2,000.00
Freddie Jacks.....	418	10	Lost.....	1,000.00
Morris Lux.....	2866	10	Lost.....	750.00
Marty Summers.....	68	10	Won.....	1,250.00
Charley Hayee.....	924	10	Lost.....	600.00
Charley Pilkington.....	407	10	Won.....	1,000.00
				7,500.00

Judges	License No.	Referees	License No.	Chief seconds	License No.
George Schegler.....		Tommy Smith.....		Louis Fink.....	
Sam Jacobs.....		Harry Stout.....		Charley Rose.....	
				Louis Fink.....	
				Joe Malone.....	
				Dyer Dallins.....	
				Joe Woodman.....	
				Joe Woodman.....	

88	Gross receipts.....	\$3,815.00
	Net receipts.....	\$2,888.00
	State tax.....	\$309.00
	Federal tax.....	\$618.00
	Complimentary tickets and press.....	415
	Working press tickets.....	26

JAMES J. JOHNSTON of the above corporation appearing before me this 3rd day of March, 1921, deposes and says that the above statements are true to the best of his knowledge and belief.

JAMES J. JOHNSTON.

Subscribed and sworn to before me this 3rd day of March, 1921.

JOHN J. T. SMITH,

Notary Public (No. 244), New York County.

STATE OF NEW YORK,

COUNTY OF NEW YORK, ss:

On the 3rd day of March in the year 1921, before me personally came James J. Johnston, to me known, and being by me duly sworn

did depose and say that he resides in county of New York; that he is the matchmaker of The Central Manhattan Boxing Club, the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

JOHN J. T. SMITH,

Notary Public (No. 244), New York County.

To be filed and made a part of this report.

Copy of report to State treasurer.

Referee's reports:

Referees.

Physicians.

Judges' cards.

Weights.

(The boxing commission furnishes blanks for all the above and these reports must be filed with the corporation report.)

GOVERNMENT EXHIBIT 4

11/4/1921

New York State Boxing Commission

Received Mar. 9, 1921.

Referred to-----per Sec'y.

To the STATE TREASURER, Albany, N. Y.

The undersigned, complying with the provisions of section 25 of chapter 912 of the Laws of 1920, makes the following report:

I. Name of club: Central Manhattan Boxing Club.

II. Address: 8th Avenue & 155th Street, New York.

III. Date of contest: February 28th, 1921.

IV. Names of contestants.

Charley Hayes, vs. Charley Pilkington.

Charley Beecher, " Freddie Jacks.

Jimmy Kane, " Packey Hommey.

Marty Summers, " Morris Lux.

V. Number of tickets sold and gross proceeds thereof:

50 No. 1 to No. 50	General admission at-----	\$ 2.00	\$ 100.00
141 No. 1 to No. 141	Reserved seats at-----	\$ 3.00	\$ 423.00
	reduced from \$5.		
284 No. 1 to No. 284	Reserved seats at-----	\$ 3.00	\$ 852.00
70 No. 1 to No. 70	Reserved seats at-----	\$ 5.00	\$ 350.00
195 No. 1 to No. 195	Reserved seats at-----	\$ 5.00	\$ 975.00
34 No. 1 to No. 34	Reserved seats at-----	\$10.00	\$ 340.00
	Complimentary Gross-----	\$-----	\$3, 140.00
	Total-----		\$6, 180.00
			5%
			\$ 309.00

Number of press tickets issued, 213 at \$10.00, 73 at \$5.00.

Number of complimentary tickets issued, 129 at \$5.00.

91 VI. No contest other than the foregoing has been held by the undersigned since rendering its last report.

VII. No person without a ticket was admitted to the contest on the above mentioned date, and the foregoing is a true and correct statement of the total number of tickets issued, sold and exchanged in connection with said contest, and of the amount of the gross receipts of all tickets sold for said contest, and any other revenue.

Dated March 2nd, 1921.

By ELBERT O. SMITH, *Secretary*.

EDITH M. WOJAN.

STATE OF NEW YORK,

COUNTY OF NEW YORK, ss.:

ELBERT O. SMITH, being duly sworn says that he is the secretary treasurer of the above named corporation and as such is authorized to make this report; that he has read the foregoing report, knows the contents thereof, and that the same is true to his knowledge.

ELBERT O. SMITH.

Sworn to before me this 2nd day of March, 1921.

EDITH M. WOJAN,
*New York County, Commissioner of Deeds,
City of New York.*

N. Y. Cty. Clerk's No. 194
N. Y. Cty. Reg's. No. 22072
Comm. Expires July 13, 1922.

92

GOVERNMENT EXHIBIT 5

11/4/21

Boxing commission copy

To the STATE TREASURER, *Albany, N. Y.:*

The undersigned, complying with the provisions of section 25 of chapter 912 of the laws of 1920, makes the following report:

- I. Name of club: Central Manhattan Boxing Club.
- II. Address: 155th Street & 8th Avenue, New York City, N. Y.
- III. Date of contest: April 13th, 1921.
- IV. Names of contestants

Ted "Kid" Lewis,	vs.	Augie Ratner.
Charley Hayes,	"	Eddie James.
Artie Pierce,	"	Joe Hopkins.
Vic McLoughlin,	"	"Red" Allen.

V. Number of tickets sold and gross proceeds thereof:

215 No. 1 to No. 215	General admissions at.....	\$1.00	\$	215.00
5 No. 1 to No. 5	Reserved seats at.....	\$3.00	\$	15.00
249 No. 1 to No. 249	Reserved seats at.....	\$3.00	\$	747.00
16 No. 1 to No. 16	Reserved seats at.....	\$5.00	\$	80.00
129 No. 1 to No. 129	Reserved seats at.....	\$5.00	\$	645.00
162 No. 1 to No. 162	Reserved seats at.....	\$7.00	\$1,134.00	
17 No. 1 to No. 17	Reserved seats at.....	\$7.00	\$	119.00
11—\$3.00	Tickets exchanged at.....	\$5.00	\$	24.20
9—\$5.00	Tickets exchanged at.....	\$7.00	\$	19.80
Total.....				\$2,900.00
Number of press tickets issued, 150—\$7.00; 100—\$5.00 }				
Number of complimentary tickets issued, 43—\$7.00; 37—\$5.00 }				
Comp gross.....				2,051.00
				\$5,050.00
				5%
				\$252.50

93 VI. No contest other than the foregoing has been held by the undersigned since rendering its last report.

VII. No person without a ticket was admitted to the contest on the above mentioned date, and the foregoing is a true and correct statement of the total number of tickets issued, sold and exchanged in connection with said contest, and of the amount of the gross receipts of all tickets sold for said contest, and any other revenue.

Dated April 15th, 1921.

By JOSEPH M. O'BRIEN,

Asst. Treasurer.

94 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

JOSEPH M. O'BRIEN, being duly sworn says that he is the asst. treasurer of the above named corporation association and as such is authorized to make this club report; that he has read the foregoing report, knows the contents thereof, and that the same is true to his knowledge.

JOSEPH M. O'BRIEN.

Sworn to before me this 15th day of April, 1921.

JOSEPH A. O'BRIEN,

Notary Public, Kings County.

Residing in Borough of Brooklyn.

Kings Co. Clerk's No. 44.

Kings Co. Register's No. 2085.

New York Co. Clerk's No. 92.

New York Co. Register's No. 2048.

Term expires March 30, 1922.

11/4/1921

New York State Boxing Commission Corporation report after contest

This report must reach the boxing commission not later than 72 hours after the contest herein described. This report must be type-written.

Report of Central Manhattan Boxing Club, corporation of exhibition held at 155th Street & 8th Avenue, New York City, N. Y., New York, on April 13th, 1921

The following are the names of all boxers taking part, duration of bouts, decisions, payments made to boxers:

Boxers	License No.	Rounds	Decisions	Payments to boxers
Ted "Kid" Lewis.....		15	No.....	\$911.69
Augie Ratner.....		15	Yes.....	599.80
Charley Hayes.....		10	No.....	300.00
Eddie James.....		10	Yes.....	300.00
Artie Pierce.....		6	Yes.....	50.00
Joe Hopkins.....		6	No.....	50.00
Vic McLoughlin.....		6	Yes.....	50.00
"Red" Allen.....		6	No.....	50.00
				\$2,311.49

96	Judges	License No.	Referees	License No.	Chief seconds	License No.
	Sam Jacobs.....		Moe Smith.....		Charles Harvey.....	465
	Liebgold.....		Artie McGovern.....		Frank Bagley.....	479
					Harry Jackson.....	
					Paul Bracken.....	
					M. Ladisky.....	
					Paul Bracken.....	
					Jack Moore.....	

Gross receipts.....	\$5,555.00
Net receipts.....	\$2,999.00
State tax.....	\$252.50
Federal tax.....	\$505.00
Complimentary tickets, 43 @ \$7.00; 37 @ \$5.00.	
Working press tickets, 150 @ \$7.00; 103 @ \$5.00.	

JOSEPH M. O'BRIEN, asst. treasurer of the above corporation appearing before me this 15th day of April, 1920, deposes and says that the above statements are true to the best of his knowledge and belief.

JOSEPH M. O'BRIEN.

Subscribed and sworn to before me this 15th day of April, 1920.

JOSEPH A. O'BRIEN.

97 **STATE OF NEW YORK,**
 COUNTY OF NEW YORK, ss:

On the 15th day of April in the year 1921, before me personally came Joseph M. O'Brien, to me known, and being by me duly sworn, did depose and say that he resides in borough of Manhattan, New York; that he is the asst. treas. of Central Manhattan Boxing Club, the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

JOSEPH A. O'BRIEN,
Notary Public.

To be filed and made a part of this report.

Copy of report to State treasurer.

Referee's reports:

Referees.

Physicians.

Judge's cards.

Weights.

(The boxing commission furnishes blanks for all the above and these reports must be filed with the corporation report.)

98 **GOVERNMENT EXHIBIT 7**

11/4/1921

New York State Boxing Commission

Received Mar. 14, 1921.

Referred to-----per Sec'ty.

To the STATE TREASURER, *Albany, N. Y.:*

The undersigned, complying with the provisions of section 25 of chapter 912 of the Laws of 1920, makes the following report:

- I. Name of club: Central Manhattan Boxing Club.
- II. Address: 155th Street & 8th Avenue, New York City, N. Y.
- III. Date of contest: March 10th, 1921.
- IV. Name of contestants:

Jack Goldie,	vs. Arthur Pierce.
"Kid" Wolf,	" Frankie Daly.
"Battling" Levinsky,	" Homer Smith.
"Kid" Norfolk,	" Pinkey Lewis.

V. Number of tickets sold and gross proceeds thereof:

200 No. 1 to No. 200	General admissions at -----	\$1.00	\$200.00
450 No. 1 to No. 450	Reserved seats at -----	\$3.00	\$1,337.00
541 No. 1 to No. 541	Reserved seats at -----	\$5.00	\$2,705.00
327 No. 1 to No. 327	Reserved seats at -----	\$7.00	\$2,289.00
	Reduced from 5.00 to -----		

137 No. 1 to No. 137	Reserved seats at.....	\$3.00	\$411.00
23—3.00	Tickets exchanged at.....	\$5.00	\$46.00
2—5.00	Tickets exchanged at.....	\$7.00	\$44.00
			\$7,872.00
	Complimentary tax.....		\$2,868.00
	Total		\$9,940.00
			5%
			\$497.00

Number of press tickets issued, 331 at \$7.00; 43 at \$5.00.

Number of complimentary tickets issued, 36 at \$7.00; 7 at \$5.00.

99 VI. No contest other than the foregoing has been held by the undersigned since rendering its last report.

VII. No person without a ticket was admitted to the contest on the above mentioned date, and the foregoing is a true and correct statement of the total number of tickets issued, sold, and exchanged in connection with said contest, and of the amount of the gross receipts of all tickets sold for said contest, and any other revenue.

Dated March 12th, 1921.

By JOSEPH M. O'BRIEN,
Asst. Secretary.

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

JOSEPH M. O'BRIEN, being duly sworn, says that he is the asst. secretary of the above named corporation association and as such is authorized to make this club report; that he has read the foregoing report, knows the contents thereof, and that the same is true to his knowledge.

Sworn to before me this 14th day of March, 1921.

JOSEPH A. O'BRIEN,
Notary Public, Kings County.

Residing in Borough of Brooklyn.
Kings Co. Clerk's No. 44.
Kings Co. Register's No. 2085.
New York Co. Clerk's No. 92.
New York Co. Register's No. 2048.
Term expires March 30, 1922.

11/4/1921

New York State Boxing Commission

Received Mar. 14, 1921.

Referred to.....per Sec'y.

New York State Boxing Commission
Corporation report after contest

This report must reach the boxing commission not later than 72 hours after the contest herein described. This report must be type-written.

Report of Central Manhattan Boxing Club, corporation of Exhibition held at Manhattan Casino, 155th Street & 8th Avenue, New York City, N. Y., on March 10th, 1921

The following are the names of all boxers taking part, duration of bouts, decisions, payments made to boxers:

Boxers	License No.	Rounds	Decisions	Payments to boxers
Jack Goldie.....		6		35.00
Arthur Pierce.....		6	Yes	50.00
"Battling" Levinsky.....		12	Yes	1,250.00
Homer Smith.....		12		1,070.00
"Kid" Wolfe.....		12	Yes	850.00
Pinkey Lewis.....		12		1,500.00
"Kid" Norfolk.....		12	Yes	1,500.00
				6,205.00

101 Judges	License No.	Referees	License No.	Chief seconds	Licens e No.
Thos. Shortell.....		Dan Hickey..... James Savage.....		Joe Golding..... Joe McKenna..... Dan Morgan..... Joe Golden..... "Doc" Bagley..... Tom O'Rourke..... Leo P. Flynn..... Joe Woodman.....	

Gross receipts.....	\$8,209.40
Net receipts.....	\$6,718.40
State tax.....	\$ 497.00
Federal tax.....	\$ 707.20
Complimentary tickets, 36 at 7.09; 7 at 5.00.	
Working press tickets, 331 at 7.00; 43 at 5.00.	

JAMES J. JOHNSTON, of the above corporation, appearing before me this 14th day of March, 1921, deposes and says that the above statements are true to the best of his knowledge and belief.

JAMES J. JOHNSTON.

Subscribed and sworn to before me this 14th day of March, 1920.

JOSEPH A. O'BRIEN,

Notary Public, Kings County.

Residing in Borough of Brooklyn.

Kings Co. Clerk's No. 44.

Kings Co. Register's No. 2085.

New York Co. Clerk's No. 92.

New York Co. Register's No. 2048.

Term expires March 30, 1922.

102 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

On the 14th day of March, in the year 1921, before me personally came James J. Johnston, to me known, and being by me duly sworn, did depose and say that he resides in New York City; that he is the

matchmaker & general manager of Central Manhattan Boxing Club, the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

JOSEPH A. O'BRIEN,

Notary Public, Kings County.

Residing in Borough of Brooklyn.

Kings Co. Clerk's No. 44.

King's Co. Register's No. 2085.

New York Co. Clerk's No. 92.

New York Co. Register's No. 2048.

Term expires March 30, 1922.

To be filed and made a part of this report.

Copy of report to State treasurer.

Referee's reports:

Referees.

Physicians.

Judge's cards.

Weights.

(The boxing commission furnishes blanks for all the above and these reports must be filed with the corporation report.)

103

GOVERNMENT EXHIBIT 9

11/4/21

New York State Boxing Commission

Received Mar. 28, 1921.

Referred to -----, per Sec'ty.

New York State Boxing Commission Corporation report after contest

This report must reach the boxing commission not later than 72 hours after the contest herein described. This report must be type-written.

Report of Central Manhattan Boxing Club, corporation of Exhibition held at West 155th Street and Eighth Ave., N. Y. City, on March 24th, 1921

The following are the names of all boxers taking part, duration of bouts, decisions, payments made to boxers:

Boxers	License No.	Rounds	Decisions	Payments to boxers
Pete Herman.....	344	1	Won.....	\$1,100.00
George Adams.....	3055	1	Lost.....	750.00
Jack Stone.....	1202	10	Lost.....	750
Augie Ratner.....	73	10	Won.....	702.45
Willie Morris.....	2141	6	Draw.....	50
Artie Pierce.....	2778	6	Draw.....	50
Peter Slane.....	931	6	Won.....	50
Joe Dundee.....	1948	6	Lost.....	50

104 Judges	License No.	Referees	License No.	Chief Seconds	License No.
Martin McCue.....		John Donnelly.....		Lew Brown.....	899
Mr. Connelly.....		Artie McGovern.....		Charlie Rose.....	796
				Doc Bagley.....	479
				Julius Hirsh.....	3226
				Morris Ladisky.....	1906
				Tony Bolozolo.....	1714
				Ben Smith.....	1640
				Harry Maxwell.....	1698

Gross receipts.....	\$5,680.00
Net receipts.....	\$3,867.45
State tax.....	\$ 284.00
Federal tax.....	\$ 568.00
Complimentary tickets, 227—5.00; 158—3.30, including press tickets.	

JOSEPH M. O'BRIEN, asst. treas. of the above corporation appearing before me this 26th day of March, 1921, deposes and says that the above statements are true to the best of his knowledge and belief.

JOSEPH M. O'BRIEN.

Subscribed and sworn to before me this 26th day of March, 1921.

JOSEPH A. O'BRIEN,

Notary Public, Kings County.

Residing in Borough of Brooklyn.

Kings Co. Clerk's No. 44.

Kings Co. Register's No. 2085.

New York Co. Clerk's No. 92.

New York Co. Register's No. 2048.

Term expires March 30, 1922.

105 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

On the 26th day of March, in the year 1921, before me personally came Joseph M. O'Brien, to me known, and being by me duly sworn, did depose and say that he resides in Borough of Manhattan, N. Y.; that he is the asst. secretary of Central Manhattan Boxing Club the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by

order of the board of directors of said corporation, and that he signed his name thereto by like order.

JOSEPH A. O'BRIEN

Notary Public, Kings County.

Residing in Borough of Brooklyn.

Kings Co. Clerk's No. 44.

Kings Co. Register's No. 2085.

New York Co. Clerk's No. 92.

New York Co. Register's No. 2048.

Term expires March 30, 1922.

To be filed and made a part of this report.

Copy of report to State treasurer.

Referee's reports:

Referees.

Physicians.

Judges' cards.

Weights.

(The boxing commission furnishes blanks for all the above and these reports must be filed with the corporation report.)

106

GOVERNMENT EXHIBIT 10.

11/4/21

New York State Boxing Commission

Received Mar. 28, 1921.

Referred to----- per Sec'y

To the STATE TREASURER, *Albany, N. Y.:*

The undersigned, complying with the provisions of Section 25 of Chapter 912 of the Laws of 1920, makes the following report:

I. Name of club: Central Manhattan Boxing Club.

II. Address: 155th Street and Eight Ave., N. Y. City

III. Date of contest: March 24th 1921.

IV. Names of contestants: Kid Herman, George Adams, Jack Stone, Augie Ratner, Willie Morris, Artie Pierce, Joe Dundee, Pete Slaine.

V. Number of tickets sold and gross proceeds thereof:

No. 1 to No. 304	General admissions at-----	\$5.00	\$1,520.
No. 1 to No. 37	Reserved seats at-----	\$5.00	\$ 184.
No. 1 to No. 49	Reserved seats at-----	\$3.30	\$ 147.
No. 1 to No. 298	Reserved seats at-----	\$3.30	\$ 894.
No. 1 to No. 102	Reserved seats at-----	\$2.20	\$ 204.
No. 1 to No. 413	Reserved seats at-----	\$2.00	\$ 826.
No. 1 to No. 240	Reserved seats at-----	\$1.10	\$ 240.
10	Tickets exchanged at-----	\$3.30	\$ 30.
5	Tickets exchanged at-----	\$5.00	\$ 25.
	Complimentary tickets-----		\$1,609.
Total-----			\$5,680.00
			5%
			\$ 284.00

Number of press tickets issued, 300.

Number of complimentary tickets issued, 85.

107 VI. No contest other than the foregoing has been held by the undersigned since rendering its last report.

VII. No person without a ticket was admitted to the contest on the above mentioned date, and the foregoing is a true and correct statement of the total number of tickets issued, sold and exchanged in connection with said contest, and of the amount of the gross receipts of all tickets sold for said contest, and any other revenue.

Dated 25th -----, 1921.

By JOSEPH M. O'BRIEN,
Asst. Secretary Treasurer.

STATE OF NEW YORK,

COUNTY OF NEW YORK, ss:

JOSEPH M. O'BRIEN, being duly sworn says that he is the ass't secretary of the above named corporation association and as such is authorized to make this club report; that he has read the foregoing report, knows the contents thereof, and that the same is true to his knowledge.

Sworn to before me this 26th day of March, 1921.

JOSEPH A. O'BRIEN,
Notary Public, Kings County.

Residing in Borough of Brooklyn.
Kings Co. Clerk's No. 44.
Kings Co. Register's No. 2085.
New York Co. Clerk's No. 92.
New York Co. Register's No. 2048.
Term expires March 30, 1922.

108

GOVERNMENT EXHIBIT 11

11/4/21

New York State Boxing Commission

Received Apr. 5, 1921.

Referred to ----- per Sec'y.

New York State Boxing Commission Corporation report after contest

This report must reach the boxing commission not later than 72 hours after the contest herein described. This report must be type-written.

Report of Central Manhattan Boxing Club, corporation of exhibition held at 155th Street & 8th Avenue, New York on March 31st, 1921.

The following are the names of all boxers taking part, duration of bouts, decisions, payments made to boxers:

Boxers	License No.	Rounds	Decisions	Payments to boxers
Johnny Buff.....		2	Yes.....	\$3,000.00
Abe Goldstein.....		2		3,000.00
Mike McCabe.....		10	Draw.....	500.00
Jimmy Powers.....		10	do.....	250.00
Kid Carter.....		2		50.00
K. O. Kaplin.....		2	Yes.....	50.00
Artie Pierce.....		6	Yes.....	50.00
Terry Davis.....		6		50.00
				6,950.00

109 Judges	License No.	Referees	License No.	Chief seconds	License No.
Thomas Shortell.....		Thomas Smith.....	580	J. Hirsch.....	3236
George Schwager.....		Patsy Haley.....	591	B. Seeman.....	799
				P. Bracken.....	1532
				J. Gould.....	1422
				R. Lippman.....	786
				J. Gould.....	1422
				J. Hannen.....	2660
				F. Maxwell.....	1698

Gross receipts..... \$12,829.30
 Net receipts..... \$11,454.00
 State tax..... \$ 687.65
 Federal tax..... \$ 1,375.30
 Complimentary tickets 80 @ \$5.50.
 Working press tickets, 202 @ \$7.70; 97 @ \$5.50.

JOSEPH M. O'BRIEN, of the above corporation, appearing before me this 2nd day of April, 1921, deposes and says that the above statements are true to the best of his knowledge and belief.

JOSEPH M. O'BRIEN.

Subscribed and sworn to before me this 2nd day of April, 1921.

JOSEPH A. O'BRIEN,
Notary Public, Kings County,
 Residing in Borough of Brooklyn.
 Kings Co. Clerk's No. 44.
 Kings Co. Register's No. 2085.
 New York Co. Register's No. 2048.
 New York Co. Clerk's No. 92.
 Term expires March 30, 1922.

110 STATE OF NEW YORK,
 COUNTY OF NEW YORK, ss:

On the 2nd day of April, in the year 1921, before me personally came Joseph M. O'Brien, to me known, and being by me duly sworn, did depose and say that he resides in Borough of Manhattan; that he is the ass. secretary of Central Manhattan Boxing Club, the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of

the board of directors of said corporation, and that he signed his name thereto by like order.

JOSEPH A. O'BRIEN,

Notary Public, Kings County.

Residing in Borough of Brooklyn.

Kings Co. Clerk's No. 44.

Kings Co. Register's No. 2085.

New York Co. Clerk's No. 92.

New York Co. Register's No. 2048.

Term expires March 30, 1922.

To be filed and made a part of this report.

Copy of report to State Treasurer.

Referee's reports:

Referees.

Physicians.

Judges' cards.

Weights.

(The boxing commission furnishes blanks for all the above and these reports must be filed with the corporation report.)

111 GOVERNMENT EXHIBIT 12 FOR IDENTIFICATION

11/4/21

New York State Boxing Commission

Received Apr. 5, 1921.

Referred to ----- per Sec'ty.

To the STATE TREASURER, *Albany, N. Y.*:

The undersigned, complying with the provisions of section 25 of chapter 912 of the Laws of 1920, makes the following report:

I. Name of club: Central Manhattan Boxing Club.

II. Address: 155th Street & 8th Avenue, New York City, N. Y.

III. Date of contest: March 31st, 1921.

IV. Names of contestants:

Johnny Buff, vs. Abe Goldstein.

Mike McCabe, " Jimmy Powers.

Kid Carter, " K. O. Kaplin.

Artie Pierce, " Terry Davis.

V. Number of tickets sold and gross proceeds thereof:

112	217 No. 1 to No. 217	General admissions at-----	\$1.00	\$	217.00
	125 No. 1 to No. 125	Reserved seats at-----	\$3.00	\$	375.00
	457 No. 1 to No. 457	Reserved seats at-----	\$3.00	\$	1,371.00
	91 No. 1 to No. 91	Reserved seats at-----	\$5.00	\$	455.00
	850 No. 1 to No. 850	Reserved seats at-----	\$5.00	\$	4,250.00
	10 No. 1 to No. 10	Reserved seats at-----	\$7.00	\$	70.00
	66 No. 1 to No. 66	Reserved seats at-----	\$7.00	\$	462.00
	593 No. 1 to No. 593	Reserved seats at-----	\$7.00	\$	4,151.00
	45—\$3.00	Tickets exchanged at-----	\$5.00	\$	190.00
		Cash in box-----		\$	4.00
		Complimentary gross-----		\$	2,290.00
		Total-----		\$13,753.00	5%
				\$	687.65

Number of press tickets issued, 202 @ \$7.70; 97 @ \$5.50.

Number of complimentary tickets issued, 80 @ \$5.50.

VI. No contest other than the foregoing has been held by the undersigned since rendering its last report.

VII. No person without a ticket was admitted to the contest on the above mentioned date, and the foregoing is a true and correct statement of the total number of tickets issued, sold and exchanged in connection with said contest, and of the amount of the gross receipts of all tickets sold for said contest, and any other revenue.

Dated April 2nd, 1921.

By JOSEPH M O'BRIEN,
Asst. Treasurer.

113 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

JOSEPH M. O'BRIEN, being duly sworn says that he is the assistant secretary of the above named corporation association and as such is authorized to make this club

report; that he has read the foregoing report, knows the contents thereof, and that the same is true to his knowledge.

JOSEPH M. O'BRIEN.

Sworn to before me this 2nd day of April, 1921.

JOSEPH A. O'BRIEN,
Notary Public, Kings County.

Residing in Borough of Brooklyn.
Kings Co. Clerk's No. 44.
Kings Co. Register's No. 2085.
New York Co. Clerk's No. 92.
New York Co. Register's No. 2048.
Term expires March 30, 1922.

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GOVERNMENT EXHIBIT 13

11/4/21

New York State Boxing Commission

Received April 11, 1921.

Referred to-----, per Sec'ty.

New York State Boxing Commission report after contest

This report must reach the boxing commission not later than 72 hours after the contest herein described. This report must be typewritten.

Report of Central Manhattan Boxing Club, corporation, of exhibition held at Manhattan Casino, 155th Street, New York City, N. Y., on April 7th, 1921

The following are the names of all boxers taking part, duration of bouts, decisions, payments made to boxers:

Boxers	License No.	Rounds	Decisions	Payments to boxers
Jack Sharkey.....		15	No.....	\$3,617.79
Midget Smith.....	1002	15	Yes.....	3,014.82
Jimie Duffy.....	3530	10	No.....	450.00
Mickey Donley.....	1002	10	Yes.....	650.00
Jack Redmond.....	1598	6	Draw.....	50.00
Barney McGovern.....	160	6	Draw.....	50.00
Charlie Meaney.....	931	6	No.....	50.00
Pete Blaine.....	3347	6	Yes.....	50.00
				7,932.61

115 Judges	License No.	Referees	License No.	Chief seconds	License No.
Jim Fury.....		Tommy Smith.....		L. Solow.....	3204
James Devitt.....		Johnny Burdick.....		Harry Neary.....	826
				A. Amodeo.....	836
				L. Solow.....	3204
				J. Johnson.....	2105
				W. Freeman.....	2763
				H. Maxwell.....	1698
				H. Neary.....	826

Gross receipts..... \$16,424.10
 Net receipts..... \$12,684.00
 State tax..... \$746.55
 Federal tax..... \$1,493.10
 Complimentary tickets, 80 @ \$5.50.
 Working press tickets, 128 @ \$5.50; 171 @ \$7.70.

JOSEPH M. O'BRIEN, of the above corporation appearing before me this 11th day of April, 1921, deposes and says that the above statements are true to the best of his knowledge and belief.

JOSEPH M. O'BRIEN.

Subscribed and sworn to before me this 11th day of April, 1921.

116 STATE OF NEW YORK,

COUNTY OF NEW YORK, ss:

On the 11th day of April, in the year 1921, before me personally came Joseph M. O'Brien, to me known, and being by me duly sworn, did depose and say that he resides in city of New York; that he is the asst. treasurer of the Central Manhattan Boxing Club—the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

J. NEWTON OSORIO,

Commr. of Deeds, N. Y. City.

N. Y. Co. Clerk # 15.

Expires March 1, 1921.

To be filed and made a part of this report.

Copy of report to State treasurer.

Referee's reports:

Referees.

Physicians.

Judges' cards.

Weights.

(The boxing commission furnishes blanks for all the above and these reports must be filed with the corporation report.)

117

GOVERNMENT EXHIBIT 14 FOR IDENTIFICATION

11/4/21

New York State Boxing Commission

Received Apr. 11, 1921

Referred to..... per Sec'y.

To the STATE TREASURER, Albany, N. Y.:

The undersigned, complying with the provisions of section 25 of chapter 912 of the Laws of 1920, makes the following report:

I. Name of club: Central Manhattan Boxing Club.

II. Address: West 155th Street, N. Y. City.

III. Date of contest: April 7th 1921.

IV. Names of contestants: Jack Sharkey, Midget Smith, Barney McGovern, Jack Redmond, Mickey Donnelly, Jimmie Duffy, Pete Slane, Charles Meaney.

V. Number of tickets sold and gross proceeds thereof:

No. 1 to No. 216	General admissions at	\$1.00	\$ 216.
No. 1 to No. 606	Reserved seats at	\$3.00	\$ 1,818.
No. 1 to No. 831	Reserved seats at	\$5.00	\$ 4,155.
No. 1 to No. 923	Reserved seats at	\$7.00	\$ 6,461.
3-3.00	Tickets exchanged at	\$7.00	\$ 12.
16-5.00	Tickets exchanged at	\$7.00	\$ 32.
	Complimentary gross		\$ 2,237.
Total			\$14,931.
			5%

746.55

Number of press tickets issued, 128, 5.00; 171, 7.70.
Number of complimentary tickets issued, 80, 5.50.

118 I. No contest other than the foregoing has been held by the undersigned since rendering its last report.

VII. No person without a ticket was admitted to the contest on the above mentioned date, and the foregoing is a true and correct statement of the total number of tickets issued, sold and exchanged in connection with said contest, and of the amount of the gross receipts of all tickets sold for said contest, and any other revenue.

Dated....., 192--

By JOSEPH M. O'BRIEN
Asst Treasurer.

STATE OF NEW YORK,

COUNTY OF NEW YORK, ss:

JOSEPH M. O'BRIEN, being duly sworn says that he is the asst treasurer of the above named corporation association and as such is authorized to make this club report; that he has read the foregoing report, knows the contents thereof, and that the same is true to his knowledge.

Sworn to before me this 11th day of April, 1921.

J NEWTON OSORIO,
Commissioner of Deeds, N. Y. City.

N. Y. Co. Clerk #15
Expires March 1, 1923.

119 GOVERNMENT EXHIBIT 15

11/4/21

New York State Boxing Commission

Corporation report after contest

This report must reach the boxing commission not later than 72 hours after the contest herein described. This report must be type-written.

V. Number of tickets sold and gross proceeds thereof:

123	230 No. 1 to No. 230	General admissions at-----	\$1.00	\$	230.00
	443 No. 1 to No. 443	Reserved seats at-----	\$2.00	\$	886.00
163	No. 1 to No. 163	Reserved seats at-----	\$2.00	\$	326.00
257	No. 1 to No. 257	Reserved seats at-----	\$3.00	\$	771.00
59	No. 1 to No. 59	Reserved seats at-----	\$3.00	\$	177.00
227	No. 1 to No. 227	Reserved seats at-----	\$5.00	\$1,	135.00
		Tickets exchanged at-----		\$	38.00
					\$3,563.00
		Complimentary gross -----			\$1,340.00
		Total -----		\$4,	903.00
					5%
				\$	245.15

Number of press tickets issued, 205 @ \$5.00; 30 @ \$3.00.

Number of complimentary tickets issued, 75 @ \$3.00.

VI. No contest other than the foregoing has been held by the undersigned since rendering its last report.

VII. No person without a ticket was admitted to the contest on the above-mentioned date, and the foregoing is a true and correct statement of the total number of tickets issued, sold, and exchanged in connection with said contest, and of the amount of the gross receipts of all tickets sold for said contest, and any other revenue.

Dated May 6th, 1921.

By JOSEPH M. O'BRIEN,
Asst. Treasurer.

124 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

JOSEPH M. O'BRIEN, being duly sworn, says that he is the asst. treasurer of the above-named corporation and as such is authorized to make this report; that he has read the foregoing report, knows the contents thereof, and that the same is true to his knowledge.

Sworn to before me this 6th day of May, 1921.

FRANK H. RICE,
Notary Public.

New York County, No. 80.
New York Register No. 2126.
Term expires March 30, 1922.

GOVERNMENT EXHIBIT 17

11/4/21

New York State Boxing Commission

Received May 28, 1921.

Referred to-----per Sec'y.

New York State Boxing Commission Corporation report after contest

This report must reach the boxing commission not later than 72 hours after the contest herein described. This report must be type-written.

125 Report of Central Manhattan Boxing Club corporation of exhibition held at Manhattan Casino, 155th St. & 8th Ave., N. Y. C., New York, on May 19th, 1921.

The following are the names of all boxers taking part, duration of bouts, decisions, payments made to boxers:

Boxers	License No.	Rounds	Decisions	Payments to boxers
Bob Martin.....	2273	10	Yes.....	\$403. 80
Joe Cox.....	2672	10	No.....	1,000. 00
Earl Puryear.....	329	10	Yes.....	400. 00
Bud Dempsey.....	47	10	No.....	250. 00
Kid Carter.....	2713	6	No.....	50. 00
Babe Smith.....	2284	6	Yes.....	50. 00
Willie Gilligan.....	1316	6	No.....	50. 00
Willie Burns.....	2188	6	Yes.....	50. 00
				2,353. 80

Judges	License No.	Referees	License No.	Chief seconds	License No.
Mr. Donnelly.....		Mr. Haley.....		Jimmy Bronson.....	2338
Mr. Schwegler.....		Mr. Haukup.....		H. Cohn.....	3779
				Mr. Smith.....	1640
				Mr. Hersh.....	3218
				Mr. Kuster.....	3618
				Mr. Lyons.....	486
				Mr. Gaboury.....	1122
				W. Boyle.....	1632

Gross receipts.....	\$2, 818. 20
Net receipts.....	2, 562. 00
State tax.....	128. 10
Federal tax.....	256. 20

Complimentary tickets, 72, \$3.00.
Working press tickets, 200, 5.00.

126 JOSEPH M. O'BRIEN of the above corporation appearing before me this 20th day of May, 1921, deposes and says that the above statements are true to the best of his knowledge and belief.

JOSEPH M. O'BRIEN.

Subscribed and sworn to before me this 20 day of May, 1921.

STATE OF NEW YORK,
COUNTY OF N. Y., ss:

On the 20 day of May, in the year 1921, before me personally came Joseph M. O'Brien, to me known, and being by me duly sworn, did depose and say that he resides in New York City; that he is the asst. treasurer of Central Manhattan Boxing Club, the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of

directors of said corporation, and that he signed his name thereto by like order.

CORNELIUS J. CREGAN,
Notary Public.

New York County No. 190.
New York Register No. 2161.
Com. exp. March 30, 1922.

To be filed and made a part of this report.

Copy of report to State treasurer.

Referee's reports:

Referees.

Physicians.

Judges' cards.

Weights.

- 127 (The boxing commission furnishes blanks for all the above and these reports must be filed with the corporation report.)

GOVERNMENT EXHIBIT 18 FOR IDENTIFICATION

(Copy for boxing commission)

11/4/21

New York State Boxing Commission

Received May 23, 1921.

Referred to ----- per Sec'y.

To the STATE TREASURER, Albany, N. Y.:

The undersigned, complying with the provisions of section 25 of chapter 912 of the Laws of 1920, makes the following report:

I. Name of club: Central Manhattan Boxing Club.

II. Address: Manhattan Casino, 155th St., & 8th Ave., New York City, N. Y.

III. Date of contest: May 19th 1921.

IV. Names of contestants:

Bob Martin, vs. Joe Cox.

Earl Puryear, " Bud Dempsey.

Kid Carter, " Babe Smith.

Willie Gilligan, " Willie Burns.

- 128 V. Number of tickets sold and gross proceeds thereof:

202 No. 1 to No. 202	General admissions at-----	\$1.00	\$	202.00
111 No. 1 to No. 111	Reserved seats at-----	\$2.00	\$	222.00
25 No. 1 to No. 25	Reserved seats at-----	\$3.00	\$	75.00
101 No. 1 to No. 101	Reserved seats at-----	\$3.00	\$	303.00
9 No. 1 to No. 9	Reserved seats at-----	\$5.00	\$	45.00
94 No. 1 to No. 94	Reserved seats at-----	\$5.00	\$	470.00
13—\$3.00	Tickets exchanged at-----	\$5.00	\$	26.00
3—1.00	Tickets exchanged at-----	\$2.00	\$	3.00

Complimentary gross -----	\$1,346.00
	\$1,216.00

Total -----	\$2,562.00
	5%

\$ 128.10

Number of press tickets issued, 200, \$5.00.

Number of complimentary tickets issued, 72, \$3.00.

VI. No contest other than the foregoing has been held by the undersigned since rendering its last report.

VII. No person without a ticket was admitted to the contest on the above-mentioned date, and the foregoing is a true and correct statement of the total number of tickets issued, sold, and exchanged in connection with said contest, and of the amount of the gross receipts of all tickets sold for said contest, and any other revenue.

Dated May 20, 1921.

By JOSEPH M. O'BRIEN,
Asst. Treasurer.

129 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

JOSEPH M. O'BRIEN, being duly sworn says that he is the asst. treasurer of the above named corporation and as such is authorized to make this report; that he has read the foregoing report, knows the contents thereof, and that the same is true to his knowledge.

Sworn to before me this 20 day of May 1921.

CORNELIUS J. CREGAN,
Notary Public, N. Y. County, City of N. Y.

New York County No. 190.
New York Register No. 2161.
Com. exp. March 30/1922.

130 DEFENDANT'S EXHIBIT A

11/4/21

JULY 14TH, 1921.

TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
Customs House, New York City.

In re: Central Manhattan Boxing Club—774.

GENTLEMEN: Your communication, dated July 12th, asking for the payment of November, 1920 tax of \$150.78 has been referred to me.

Will you kindly notify me at once as to any and all amounts that are due for unpaid taxes on sales from November 28th, 1920 to May 20th, 1921.

The taxes were collected and paid to the assistant treasurer and the matchmaker of the Club and the moneys if not paid are still held by them.

Kindly advise me as to what amount is due and the dates for which the sales tax has not been paid.

Yours very truly,

F. C. HAYDEN.

DEFENDANT'S EXHIBIT B

Copy

No-----

Class-----

New York State Athletic Commission License Committee

Chapter 714, Laws of 1921

Application for license to hold boxing, sparring, or wrestling matches

Fees:

Cities first class, \$750.00.

Cities, 2d class, \$500.00.

Elsewhere, \$300.00.

Certified cheque, cash, or money order covering license fee must accompany all applications. Cheques and money orders to be made payable to license committee, New York State Athletic Commission.

[All answers must be typewritten.]

Date Nov. 20TH 1920.

To the License Committee, New York State Athletic Commission:

The undersigned having submitted the necessary bond and paid the required fee, hereby makes application to conduct boxing or wrestling exhibitions in accordance with chapter 714 of the Laws

of 1921 and any amendments thereto, and subject always to

132 the rules and regulations of the New York State Athletic

Commission. It is agreed that this license may be suspended or revoked at will by the license committee, and that it is not transferable.

CENTRAL MANHATTAN BOXING, INC.,
By GEORGE ESSELBORN, *President*.

Name of corporation: Central Manhattan Boxing Club, Inc.

Address: 2926 8th Ave., Boro. Man., city of N. Y.

Premises where contest will be held: Manhattan Casino, 155 Street & 8th Ave., N. Y. City.

If premises are owned by corporation, so state: Leased.

Officers of corporation:

President: George Esselborn. Address: 415 West West 50th Street, N. Y. City.

Vice-President: John Campbell. Address: 414 St. Nicholas Ave., N. Y. City.

Secretary: Elbert O. Smith. Address: 1 West 69th Street, N. Y. City.

Treasurer: Abraham Bach. Address: 566 West 160th Street, N. Y. City.

Character of corporation:

Membership club: Membership club.

Stock corporation: Stock corporation.

Date of incorporation: Nov. 20, 1920.

Date of filing certificate: Nov. 25th, 1920.

Where filed: New York County, county clerks office.

Name of matchmaker: James J. Johnston.

Name of director of bouts: John J. Powers.

Record of matchmaker: Last fifteen years has conducted athletic enterprises in N. Y. City and elsewhere. Managed six-day races 1914, 1915, 1918; managed Military Athletic League Carnival, Madison Square Garden, 1915. During World War conducted various boxing exhibitions for patriotic purposes. Managed auto races at Sheepshead Bay; 1919. Conducted a number of contests at the St. Nicholas Rink, N. Y. City, 1913-1917; also managed boxers.

Record of director of bouts: For past ten years has been engaged in promoting athletic enterprises, i. e., automobile races and boxing clubs and has managed boxers.

Record of club officials other than two above-mentioned if connected with promotion of boxing or wrestling contests heretofore, either as managers, promoters, boxers, wrestlers, or in any other capacity: No other official has ever been connected with boxers and boxing in any capacity.

Premises:

Seating capacity: About five thousand.

Is there any pending violation of the Building Department, Health Department or the Bureau of Fire Prevention? No.

Does any person other than a janitor or caretaker reside upon the premises? No.

Are religious services held in these premises? No.

Is any manager or boxer or other participant in boxing or wrestling interested either as a stockholder, bondholder or mortgagee in your corporation? No.

Is any manager, boxer or wrestler employed by your corporation, in any capacity? No.

If so, state circumstances fully-----

Has the corporation or its stockholders or officers any financial interest in any boxers or wrestlers? No.

References for club. (Give five.)

134

Name	Address
Ernest V. Finch	25 Pine Street, N. Y. City.
Oscar Foley	149 Broadway, N. Y. City.
James J. Haben	172 West 82nd Street, N. Y. City.
Charles W. Culkin	48 Jane St., N. Y. City.
James Garritty	57 Centre St., N. Y. City.

[SEAL]

CENTRAL MANHATTAN BOXING CLUB, INC.,
By GEORGE ESSELBORN (signed), *President*.

GEORGE ESSELBORN, president of the above corporation, appearing before me this 23rd day of November, 1920, deposes and says that the above statements are true to the best of his knowledge and belief.

GEORGE ESSELBORN. (Signed.)

GEORGE W. HAYDEN. (Signed.)

Subscribed and sworn to before me this 1st day of October, 1920.

135 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

On the 23rd day of November in the year 1920, before me personally came George Esselborn, to me known, and being by me duly sworn, did depose and say that he resides in New York City; that he is the president of Central Man. Boxing Club, Inc., the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

GEORGE W. HAYDEN,
Notary Public, New York County Co. 240, Reg. 2189.

Approved November 26th, 1920.

NEW YORK STATE ATHLETIC COMMISSION
LICENSE COMMITTEE,
-----, *Chairman.*

136 DEFENDANT'S EXHIBIT C.

11/4/21

Duplicate original

This indenture, made the first day of October, nineteen hundred and twenty, between Manhattan Casino, Inc., a New York corporation, having its principal office at 290 W. 155th St., New York City, party of the party of the first part, and Manhattan Athletic Club of America, Inc., a domestic membership corporation, having its principal place of business at 2926 Eighth Avenue, Borough of Manhattan, City of New York, party of the second part,

Witnesseth, That the said party of the first part hath letten, and by these presents doth grant, demise, and to farm let, unto the said party of the second part, the premises known as the ball room of the Manhattan Casino, situate on the south side of 155th Street, distant one hundred and fifty (150) feet east of Eighth Avenue, being two hundred (200) feet in length on 155th Street by one hundred (100) feet in depth on each side, more or less, with the appurtenances, for the term of fifteen (15) months from the first day of October, nineteen hundred and twenty, at the yearly rent or sum of twenty-four thousand to be paid in equal monthly payments in advance on the first day of each and every month during said term.

And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises and the same to have again, repossess and enjoy.

137 And the said party of the second part does covenant to pay to the said party of the first part the said yearly rent as herein specified.

And also, to pay all taxes and assessments and the regular annual rent or charge, which is or may be assessed or imposed according to law, upon the said premises, for the water, on or before the 1st day of June in each year, during the term, and if not so paid, the same shall be added to the rent then due. And the said party of the second part further covenants that it will not assign this lease, nor let or underlet the whole or any part of the said premises, nor make any alteration therein without the written consent of the said party of the first part, under the penalty of forfeiture and damages; and that it will not occupy or use the said premises, nor permit the same to be occupied or used for any business deemed extra hazardous on account of fire or otherwise, without the like consent under the like penalty. And the said party of the second part, further covenant that it will permit the said party of the first part, or its agent, to show the premises to persons wishing to hire or purchase, and on and after the first day of next preceding the expiration of the term, will permit the usual notices "to let" or "for sale" to be placed upon the walls or doors of said premises, and remain thereon without hindrance or molestation. And it is further agreed between the parties to these presents, that in case the building or buildings erected on these premises hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possible at the expense of

the said party of the first part; that in case the damages shall
138 be so extensive as to render the building untenable, the rent shall cease until such time as the building shall be put in complete repair, but in case of the total destruction of the premises by fire or otherwise, the rent shall be paid up to the time of such destruction, and then and from thence forth this lease shall cease and come to an end, provided, however, that such damage and destruction be not caused by the carelessness, negligence or improper conduct of the party of the second part, its agents or servants. And the said party of the second part further covenants and agrees that it will comply with all the requirements of the board of health, municipal authorities and police and fire departments of the city of New York.

And at the expiration of the said term the said party of the second part will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

And the said party of the first part does covenant that the said party of the second part, on paying the said yearly rent, and per-

forming the covenants aforesaid, shall and may peaceably and quietly have, hold, and enjoy the said demised premises for the term aforesaid.

And it is further understood and agreed, that the covenants and agreements contained in the within lease are binding on the parties hereto and their legal representatives.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

139 Sealed and delivered in the presence of—

FRANK CASE HAYDEN.

MANHATTAN CASINO CO., INC.,

By EDWARD S. WALDRON. (L. S.)

MANHATTAN ATHLETIC CLUB OF AMERICA,

By GEORGE ESSELBORN, *President*. (L. S.)

Attest:

[SEAL]

E. O. SMITH, *Secretary*.

Duplicate original

Manhattan Casino, Inc., to
Manhattan Athletic Club of America, Inc.

Lease

Dated October 1st, 1920.

Term, fifteen months.

Terminates January 1st, 1922.

Annual rent, \$24,000.

140 STATE OF NEW YORK,

CITY OF NEW YORK, COUNTY OF NEW YORK, ss:

On the 1st day of October, in the year one thousand nine hundred and twenty, before me personally came Edward S. Waldron, to me known and who, being by me duly sworn, did depose and say that he resides in the Borough of Manhattan, City of New York; that he is the president of the Manhattan Casino, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

GEORGE W. HAYDEN,

Notary Public, New York County, Co. 240, Reg. 2189.

Know that we, the Manhattan Athletic Club of America, Inc., a domestic membership corporation with offices at 2926 Eighth Avenue, New York City, assignor, in consideration of one dollar and other valuable consideration in dollars, paid by Central Manhattan Boxing Club, Inc., a New York stock corporation with its principal

office at 2926 Eighth Avenue, New York City, assignee, hereby assigns unto the assignee, a certain lease made by the Manhattan Casino, Inc., of New York City, N. Y., to the aforesaid Manhattan Athletic Club of America, Inc., for a term of fifteen (15) months of the building known as the Manhattan Casino, about one hundred feet east of 8th Avenue on the south side of 155th Street, in the Borough of Manhattan, New York City, dated the 1st day of October, 1920. A duplicate original of said lease was filed with the State boxing commission November 17, 1920.

Together with the premises therein described, and the buildings thereon, with the appurtenances.

To have and to hold the same unto the assignee, its successors and assigns, from the 23rd day of November, nineteen hundred and twenty for all the rest of said term.

years mentioned in the said lease, subject to the rents, covenants, conditions and provisos therein also mentioned.

And the assignor hereby covenants that the said assigned premises are free from incumbrances.

In witness whereof, the assignor has hereunto set its hand and seal the 23rd day of November, 1920.

In presence of—

FRANK C. HAYDEN.

[SEAL.]

MANHATTAN ATHLETIC CLUB OF AMERICA, INC.,

GEORGE ESSELBORN, *President*.

[SEAL.]

CENTRAL MANHATTAN BOXING CLUB, INC.,

GEORGE ESSELBORN, *President*.

142 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

On the 23rd day of November, nineteen hundred and twenty before me came George Esselborn, to me known, who, being by me duly sworn, did depose and say that—he resides in the city of New York, at 415 West 50th Street, that he is the president of the Manhattan Athletic Club of America, Inc., the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

GEORGE W. HAYDEN,

Notary Public, New York County, Co. 240, Reg. 2189.

143 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

On the 23rd day of November, nineteen hundred and twenty, before me came George Esselborn to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York, at 415 West 50th Street, that he is the president of the Cen-

tral Manhattan Boxing Club, Inc., the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

GEORGE W. HAYDEN,

Notary Public, New York County, Co. 240, Reg. 2189.

Manhattan Athletic Club of America, Inc., to Central Manhattan Boxing Club, Inc.

Assignment of Lease

Dated Nov. 23, 1920.

The within assignment is hereby consented to.

Nov. 23, 1920.

MANHATTAN CASINO, INC.,

By EDWARD S. WALDRON,

President.

144

DEFENDANT'S EXHIBIT D

Duplicate Original

11/4/21

Certificate of Incorporation of Central Manhattan Boxing Club, Inc.

We, the undersigned, all being natural persons of full age, and at least two-thirds being citizens of the United States, and all being residents of the State of New York, desiring to form a stock corporation pursuant to the provisions of the business corporations law of the State of New York, do hereby make, sign, acknowledge and file this certificate in duplicate for that purpose as follows:

First: The name of the proposed corporation is: Central Manhattan Boxing Club, Inc.

Second: The purposes for which it is to be formed are:

(a) To provide and maintain a clubhouse or meeting house or meeting place for its members.

(b) To provide and maintain a suitable gymnasium or gymnasiums and such other places of recreation as are usually provided for by athletic clubs or associations for the use of its members.

(c) To foster and encourage athletic sports and contests.

(d) From time to time to hold or give boxing or sparring matches or exhibitions for prizes or purses for entrance to which an entry fee is to be received, subject to and in conformity with the law.

145 (e) To buy, sell, mortgage or lease real property. To do all and everything necessary, suitable or convenient or proper for the accomplishment of any of the purposes or the attainment of any of the objects herein enumerated and incidental to the powers herein named or which at any time appears conducive or expedient for the protection and benefit of the company.

Third: The amount of the capital stock of the proposed corporation is to be \$1,000.

Fourth: The number of shares of which the capital stock shall consist of is 100 of the par value of \$10.00 per share, and the amount of capital with which said corporation shall begin business is \$500.00.

Fifth: Its principal business office will be in the Borough of Manhattan, City of New York, and its temporary office is at No. 2926 8th Avenue, Borough of Manhattan, city of New York.

Sixth: Its duration is to be perpetual.

Seventh: The number of its directors is to be three who need not be stockholders.

146 Eighth: The names and addresses of the directors are:

Names.	Post office addresses.
George Esselborn	415 West 50th Street, Borough of Manhattan, New York City.
Frank E. Smith	974 St. Nicholas Ave., Borough of Manhattan, New York City.
Daniel J. Kinsley	515 West 168th Street, Borough of Manhattan, New York City.

Ninth: The names and post office addresses of the subscribers of the certificate, together with a statement of the number of shares of stock which each agrees to take in the corporation are as follows:

Names.	Post office addresses.	Number of shares.
George Esselborn	415 West 50th Street, Borough of Manhattan, city of New York.	10
Abraham L. Bach	290 West 155th Street, Borough of Manhattan, city of New York.	10
Edward Waldron	695 St. Nicholas Avenue, Borough of Manhattan, city of New York.	10

Tenth: The meetings of the Board of Directors may be held only within the State of New York.

147 In witness whereof, we have made, signed, acknowledged, and executed this certificate, in duplicate, this 20th day of November, 1920.

GEORGE ESSELBORN,
ABRAHAM L. BACH,
EDWARD WALDRON.

Duplicate original

Certificate of incorporation of Central Manhattan Boxing Club, Inc.

Certificate of incorporation

Frank C. Hayden, attorney &c., 156 Broadway, N. Y. C.

Filed with Secretary of State Nov. 23, 1920. Recorded Nov. 25, 1920; on receipt of balance of fees.

148 STATE OF NEW YORK,

CITY OF NEW YORK, COUNTY OF NEW YORK, ss:

On this 20th day of November, 1920, before me personally came George Esselborn, Abraham Bach, and Edward Waldron, all to me known and known to me to be the individuals described in and who executed the foregoing instrument and they severally duly acknowledged to me that they executed the same.

GEORGE HAYDEN,

Notary Public, New York County, Co. 240, Reg. 2189.

149

Stipulation re bill of exceptions

[Title omitted.]

It is hereby stipulated by and between William Hayward for the Government, and Arthur N. Sager for the appellant, James J. Johnston, that the foregoing contains a true verbatim copy of all the testimony contained in the original record for and against James J. Johnston, according to the stenographer's minutes of same.

It is further stipulated that the foregoing shall be accepted as and for the bill of exceptions upon the appeal in this case, and that an order settling said bill of exceptions and ordering the same to be filed with the clerk of the District Court for the Southern District of New York may be entered by the judge who presided at the trial, although at the time of signing and settling the bill of exceptions said presiding judge may be without the Southern District of New York and that the bill of exceptions so signed and settled upon this stipulation shall be valid and binding as though the same had been signed and settled by a judge within the district in accordance with the practice obtaining in this district.

150 It is further stipulated that all exhibits not printed in full in the record herein may be used upon the argument of the appeal and handed to the court with the same force and effect as if they had been set forth at length in the record, but that all exhibits required to be printed by the Government shall be printed.

Dated June 20, 1922.

WILLIAM HAYWARD,

U. S. Attorney.

ARTHUR N. SAGER,

Attorney for Defendant.

151

In United States District Court

[Title omitted.]

Order settling bill of exceptions

Upon reading the stipulation signed by William Hayward for the Government, and Arthur N. Sager for the appellant, that the foregoing is accepted and shall serve as and for a bill of exceptions in the above entitled proceeding and that an order settling the bill of exceptions may be signed by the trial judge without the district wherein the trial was conducted, and it further appearing that the November, 1921, term of the Southern District of New York has been kept open by order of the court made from time to time,

It is ordered that the foregoing bill of exceptions be settled and filed with the clerk of the District Court for the Southern District of New York nunc pro tunc as of November 14, 1921.

WM. C. VAN FLEET,
U. S. Dist. Judge.

152

In United States District Court

[Title omitted.]

Amended assignments of error

Now comes defendant, James J. Johnston, and makes the following assignments of error, which he alleges occurred upon the trial of this cause:

1. That the trial court erred in denying the motion of the defendant to quash the indictment in each and every one of the twelve counts thereof, which motion was predicated upon the contention and ground that none of the counts of the indictment set forth any offense or crime against the United States of America.

2. That the trial court erred in permitting evidence to be received under the indictment and the several counts thereof, since the indictment and the several counts thereof are on their face insufficient in law to aver or set forth any offense against the United States, or any offense under any law of the United States or any offense whatever.

3. That the trial court erred in not directing the Jury at the close of the Government's case to find the defendant, James J. Johnston, not guilty.

4. That the trial court erred in not directing the Jury to find the defendant, James J. Johnston, not guilty at the close of the entire case.

153 5. That the verdict of the jury is not supported by any competent evidence on the record and is contrary to law.

6. That the trial court erred in entering judgment against the defendant, James J. Johnston, upon the verdict in this case.

7. That the trial court erred in overruling and denying the motion in arrest of judgment made on behalf of defendant, James J. Johnston.

8. That the trial court erred in overruling and denying the motion to set aside the verdict and grant a new trial herein, made on behalf of defendant.

9. That the trial court erred in his charge to the jury.

✓ 10. That the trial court erred in admitting incompetent, irrelevant, and immaterial evidence introduced by the Government.

11. That the trial court erred in overruling the objection of the defendant to the remarks of the district attorney made in his argument to the jury, and particularly with reference to his statement to the following effect: That one Joe O'Brien had been subpoenaed by the Government and had failed to appear, and that the defense failed to put him on the stand, which comment to the jury was prejudicial and unfair.

Wherefore, defendant prays that said judgment and sentence be reversed, set aside and held for naught.

GEORGE E. COUGHLIN,

ARTHUR N. SAGER,

Attorneys for Defendant.

154 [Citation in usual form omitted in printing.]

155 In United States District Court

[Title omitted.]

Stipulation re transcript of record

It is hereby stipulated and agreed that the foregoing is a true copy of the transcript of the record of the said district court in the above entitled matter as agreed upon by the parties.

Dated, New York, November 24, 1922.

WILLIAM HAYWARD,

United States Attorney.

ARTHUR N. SAGER,

Attorney for Plaintiff in error.

156 In United States District Court

[Title omitted.]

Clerk's certificate

I, Alexander Gilchrist, jr., clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct copy of the transcript of the record of the said district court in the above entitled matter as agreed to by the parties.

In testimony whereof, I have caused the seal of said court to be hereunto affixed by the city of New York, in the Southern District of New York, New York, on the 24 day of November, in the year of our Lord one thousand nine hundred and twenty-two, and of the independence of the said United States the one hundred and forty-seventh, etc.

[SEAL.]

ALEXANDER GILCHRIST, Jr.,
Clerk.

[24065]

1 United States Circuit Court of Appeals for the Second Circuit

James J. Johnston, plaintiff in error, against The United States of American, defendant in error

Opinion

Before Hough, Manton, and Mayer, Circuit Judges.

Writ of error to the United States District Court for the Southern District of New York. Defendant was charged in eight counts in an indictment, with a violation of sections 800, 802, and 1302 of the internal revenue law (40 Stat., 1057, 1120, 1143) and in four counts in said indictment, he is charged with the crime of embezzlement under section §47 of the Criminal Code. Judgment of conviction; defendant appeals. Reversed.

GEORGE E. COUGHLIN, Esq.,
ARTHUR N. SAGER, Esq.,
Attorneys for Plaintiff in Error.

WILLIAM HAYWARD, Esq.,
United States Attorney.

PETER J. MCCOY, Esq.,
Asst. U. S. Attorney, of Counsel.

158 MANTON, Circuit Judge.

The Central Manhattan Boxing Club, Inc., is a New York corporation. It entered into an agreement on November 26, 1920, the material parts of which were that the plaintiff in error, desiring to exclusively conduct boxing matches as the "agent, matchmaker, and manager of the Manhattan Athletic Club under the character and license held by it for the period of one year," agreed to pay the club seven hundred and fifty dollars a month, except for the months of July and August, "for the aforesaid exclusive arrangement." He agreed to hold at least one boxing match each month, and agreed to pay the club four hundred dollars one week prior to the date set for the boxing match, and three hundred and fifty dollars on the evening of the contest, except that in the months of July and August, he agreed to pay one hundred dollars. He agreed to pay the State tax

of five per cent and the Federal tax of ten per cent. The club agreed to furnish a large hall known as Manhattan Casino, lighted and heated, and with seats, boxes, and ring all arranged for a boxing contest. Plaintiff in error agreed to pay the ticket takers and ticket sellers and other necessary officials, such as the referee, physicians, timekeepers, ushers, and announcers. It was agreed that "boxing shows" should be mutually agreeable to the parties and further that "This contract shall remain in force during the life of the present license held by the Manhattan Boxing Club, Inc., but may be terminated by either party by the giving of ninety days written
159 notice." Under the State law, the boxing commission had authority to grant a license to a corporation only. The plaintiff in error neither applied for nor was he granted a boxing license. The boxing exhibitions were conducted under the sanction and authority of the New York Boxing Commission and the license was issued to the club.

The plaintiff in error has been tried and convicted on an indictment charging in eight counts a violation of §§ 800, 802, and 1308b of the internal revenue law known as the revenue act of 1918 (40 Stat. 1057, 1103, 1120, 1145) and in four counts of embezzlement of Government moneys in violation of § 47 of the United States Criminal Code. The first, fourth, seventh, and tenth counts charge the plaintiff in error with having wilfully failed and refused to account for and pay over sums of money due as an excise tax to the United States on the amount of money received as admissions paid to said exhibitions. This charge is based on § 1308 which provides that "any person who wilfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who wilfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution."

In counts second, fifth, eighth, and eleventh he is charged with a violation of the same section (sub. div. a), which provides:

160 "That any person required under Titles V, VI, VII, VIII,

IX, X, or XII to pay or to collect, account for, and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment, or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return, or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.00."

Counts third, sixth, ninth, and twelfth charge an embezzlement in having unlawfully, knowingly, and wilfully embezzled moneys of the United States representing the tax on admissions paid to the exhibi-

tions. Section 47 of the United States Criminal Code makes it a crime for any one to "embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever of the moneys, goods, chattels, records, or property of the United States." The plaintiff in error has no connection as an officer or director of the corporation, and from all that appears in the record, he had but a contractual relation. The boxing club was organized by an attorney who secured a license and thereupon it entered into a contract with the plaintiff in error for conducting boxing exhibitions under its license and for producing the revenue referred to in the contract. Boxing exhibitions were held and admission fees were collected. There is no proof as to the amount of tax collected save such as might be considered included in the admission charges paid. Some free tickets were issued, but there is no evidence to show that a tax was collected with these complimentary tickets when used.

161 The indictment in no way refers to the contract entered into between the parties, and its reading would indicate that the plaintiff in error, by authority of law, had secured a license to conduct the boxing matches, received the admission funds as well as the tax of one cent for every ten cents or fraction thereof, together with the tax on the complimentary tickets, and that this money was collected pursuant to the internal revenue statutes (40 Stat. 1057, 1103, 1120, 1143) in such case made and provided.

At the trial, the Government offered the contract in evidence and proved the facts substantially as stated. The State law providing for a boxing commission and permitting exhibitions in chap. 912 of the Laws of the State of New York of 1920.

Pursuant to the requirements of the State law, the plaintiff in error filed reports for the Central Manhattan Boxing Club, Inc., setting forth the names of the boxers taking part, the duration of the bouts, the decisions, the payments made to the boxers, together with the tax and the gross receipts, net receipts, State tax and Federal tax. He executed this instrument as the matchmaker of the boxing club. These reports were prepared on blanks furnished by the Boxing Commission. Other reports were prepared by the assistant treasurer of the corporation which were to like effect. The tax due the State was paid by the corporation.

It is clear that the plaintiff in error had no right and could not secure a license to conduct boxing contents under the laws of New

York, only a corporation could be so licensed. It would
162 have been contrary to the statute for him to have attempted to do so. The enterprise must be considered as that of the corporation. In the legal sense, he was but the agent, matchmaker and manager of the Central Manhattan Boxing Club, Inc. The contract was not a mere renting of the premises. The corporation employed the services of Johnston as well. He paid a fixed sum as stated in the contract, which meant that the club was to obtain the first profits and be assured that they would reach a total sum of

seven hundred and fifty dollars a month. The nature of the business may have demanded that. Whatever may have been the foundation for this arrangement, it was the agreement of the parties. We think that the Federal tax should be paid, as was the State tax, by the corporation. In a legal sense, the box office receipts belonged to the principal or the employer of the plaintiff in error, the corporation. His collection of the admission money was as agent or manager with the vested interest as described in the contract. Therefore, the corporation owning the box office receipts became the custodian of the Federal tax collected to be subsequently paid to the Government. Within the purview of the New York statute permitting boxing exhibitions, he was not the conductor of the contests nor the collector of the money. It is not claimed nor proven that the plaintiff in error aided or abetted the corporation in the wilfull failure to pay the tax.

Nor do we think that there was an embezzlement of the Federal tax as alleged in counts third, sixth, ninth, and twelfth. The moneys collected at the box office were not the property of the United States.

163 The law imposed the duty upon the owner of the enterprise to make returns and pay the tax to the collector of internal revenue. The obligation so to do did not make the moneys those of the United States. The obligation to pay the Government the tax is not complied with until the tax has been paid. The Treasury Department has so considered admission moneys paid to a theatre as a tax which were stolen before payment was made to the Government. (See Internal Revenue Bulletin, Vol. 1, No. 25, issued June 19, 1922, at p. 18.) Treasury decisions such as are regulations of a department of the Government, addressed to and reasonably adapted to the enforcement of an act of the Congress, the administration of which is confided to such department, have the force and effect of law if they be not in conflict with express statutory provisions. (United States vs. Grimaud, 220 U. S. 506; United States vs. Birdsall, 233 U. S. 223; United States vs. Morehead, 243 U. S. 607.) We agree with the result as directed in this ruling (but which does not amount to a regulation) and hold that the moneys received at the box office including the tax, were not the moneys of the United States. It therefore afforded no basis upon which to support an indictment for embezzlement of property of the United States within § 47 of the United States Criminal Code. The motion to direct a verdict of acquittal at the end of the Government's proof and renewed when the defendant rested, without offering evidence, should have been granted.

Judgment is reversed with directions to the district court to dismiss the indictment.

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In United States District Court

[Title omitted.]

Judgment, filed April 9, 1923

Error to the District Court of the United States for the Southern
District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the judgment of said district court be and it hereby is reversed with directions to the district court to dismiss the indictment.

C. M. H.

M. T. M.

It is further ordered that a mandate issue to the said district court in accordance with this decree.

165

[File endorsement omitted.]

166

United States Circuit Court of Appeals

[Title omitted.]

Petition for rehearing and order overruling same

To the Judges of the United States Circuit Court of Appeals for the Second Circuit:

The petition of the United States of America by William Hayward, United States attorney for the Southern District of New York, respectfully shows:

This cause was argued at the present term on the 6th day of March, 1923, before Judges Hough, Manton, and Mayer. On April 3, 1923, an opinion directing reversal of the judgment of conviction and dismissal of the indictment was filed.

The Government now respectfully petitions for a rehearing for the following reasons:

1. The decision is not in accord with the expressed purpose of the statute imposing admission taxes and providing for the manner of collection.

(Indorsed: United States Circuit Court of Appeals. Second Circuit. Filed Apr. 18, 1923. William Parkin, Clerk.

167

2. It subjects a Federal statute to the inhibition of a State statute and makes the latter a restraint upon the former.

3. The questions involved are of vital importance in administering the act of February 24, 1919, in cases now pending and daily arising.

POINT I

The ruling that the corporation, because it held the State license, was alone answerable for the taxes upon admissions, defeats the plain purpose of Congress to require the person receiving payment for admission, to collect the tax and account for and pay over such tax to the Government.

Under the State law, only a corporation could be licensed to conduct boxing contests. Johnston desired to exclusively conduct such contests (fol. 246). He caused the organization of the corporation to accomplish that purpose. It was incorporated at his expense. He paid the State license fee of \$750. He also paid the cost of the necessary bond. The only reason why the corporation was formed was to enable Johnston to lawfully conduct boxing contests. While the license was issued in the name of the corporation, it was personally delivered to Johnston. He possessed it always (fols. 86-87).

Under the contract entered into between the corporation and Johnston, the corporation was obliged to do no more than provide the Manhattan Casino, suitably equipped for boxing contests (fols.

245-255). It will be borne in mind that the Manhattan
168 Casino, Inc., the owner of the hall, leased that hall to the
Manhattan Athletic Club of America (fols. 406-417). The
latter corporation assigned the lease to Johnston's creation, the
Central Manhattan Boxing Club, Inc. (fols. 420-425). While the
contests were held under the license granted by the State to the
Central Manhattan Boxing Club, Inc., Johnston and his employees
were in complete charge of the contests and received the money paid
for admission. Johnston paid a specific rental, which was not deter-
minable by the amount of admission receipts, for the use of the
hall. He conducted the exhibitions, furnished the ticket takers,
ticket sellers, paid the contestants and exercised complete control
and dominion over the contests, uninfluenced by the corporation.
While he was designated as matchmaker of the club, it can not be
truthfully said that he was an agent or employee. The designation
was merely a compliance with the State statute. He received no
compensation from the club for his services. In fact, he remunerated
the club for furnishing him a place wherein he could conduct the con-
tests. He had exclusive and entire charge of the handling and sale of
all tickets. The admission receipts were his. The profits belonged
to him solely and absolutely. He was an independent contractor, the
lessee of the premises and of the corporation's license.

The theory of this court's opinion that the corporation was liable because it alone was lawfully entitled and licensed by the State to conduct the boxing contests practically disregards the purpose of Congress, as expressed in sections 800 and 802 of the act of February 24, 1919.

Section 800 levies a tax of 1 cent for each 10 cents paid for admission to any place, to be paid by the person paying for such

169 admission. The tax is a levy upon the spectator and not upon the person who conducts or controls the place or exhibition to which admission is sought.

Section 802 provides that every person receiving any payments for such admission shall collect the amount of the tax imposed by section 800 from the person making such payments.

The purpose of Congress is plain and unequivocal. The person collecting admissions is charged with the statutory duty of collecting the tax in addition. Section 802 incorporates the provisions of section 502, which requires the person collecting the admissions to make monthly returns and pay the taxes so collected to the collector of internal revenue.

The purpose and intent of Congress to levy a tax upon the spectator and require the person receiving payment for admission to collect such tax and pay it over to the Government can neither be defeated by a law of the State nor by an agreement which evades the law of the State. The effect of the decision is to limit and restrict the Government, despite the plain and unlimited language of the sections quoted, to the collection of taxes from the person or corporation, who under the State law is lawfully permitted to conduct the amusement.

Congress has enacted that the person collecting payment for admission shall collect the tax, which the spectator is required to pay. It has declared that the person collecting the admission tax shall turn it over to the Government. It did not say that the person authorized to conduct a place of amusement shall collect and account for the tax.

Let it be assumed that a man having a license to conduct a theatre is on his way to the box office to collect admissions and sell tickets.

170 A thief assaults him and takes his keys from his person. The thief goes to the box office and, posing as the licensed theatre owner, sells tickets, receives payment for admissions, and collects the tax which Congress has required the spectator to pay. Will it be said that the Government can not require that thief to account for and pay over the taxes which he has collected upon admissions? He is the person who received payment for the admissions. He is the person who, within the meaning of section 802, is required to collect the tax imposed by section 800. Having collected that tax, he is chargeable with the duty created by section 502 of paying over the tax moneys to the Government. But the State did not license him to operate a theatre.

It must always be borne in mind that the application of sections 800 and 802 is not dependent upon whether the person who collects the admission moneys is or is not authorized to operate or conduct the amusement to which admission is charged. The purpose of Congress is plain. The duty of collecting the tax is upon the person who receives payment for admission. Johnston received payments made by spectators for admission. He collected the tax upon those admissions. He is the person Congress had in mind in enacting

sections 800 and 802. The admission receipts were his. The corporation could neither require him to account for or pay over the admission receipts nor vest it with the possession of the tax moneys.

Suppose that Johnston had never caused the corporation to be organized. Assume no license had ever been issued or sought. Let it be supposed that Johnston, in plain violation of the law of the State, conducted boxing contests without a license. Can it be said that Johnston having no license, as required by the State law, could escape the duty placed upon him of collecting the tax upon payments for admission which he received?

171 It is said that the enterprise was that of the corporation.

The agreement of the parties, the evidence and the finding of the jury are not in accord with that conclusion. The corporation was the instrument of Johnston to accomplish his desire and yet comply with the State statute. If the enterprise was that of the corporation, why could not the corporation require Johnston to account to it and pay over to it the admission receipts? If the corporation sued Johnston to account for the admission moneys, it would clearly be met with the contract which entitled it solely and exclusively to a stipulated sum of money, in return for which it rented its hall and rented its license. Whether it rented its license in violation of the State statute is no concern of the Government in its effort to obtain from Johnston the moneys which he collected as taxes upon the payments he received for admission.

Even though it be assumed that Johnston's control of the enterprise was illegal because the State law restricted licenses to corporations only, the Government had the right, in accordance with the purpose expressed in the revenue act, to compel an accounting by the person who received the admission moneys, he being the only person required by section 802 to collect the admission taxes.

The opinion states:

Within the purview of the New York statute permitting boxing exhibitions, he was not the conductor of the contests nor the collector of the money.

We answer that Congress has not limited the duty under the revenue act to the conductor of an amusement. The duty is upon the collector of admission moneys. To assume that Johnston

172 did not collect the moneys is to declare that the moneys were not collected and overthrow the jury's finding of fact. How can it be said that the corporation collected the moneys when the facts conclusively established that it not only did not receive the moneys, but was not entitled to receive them.

Again, the opinion states:

It is not claimed or proven that the plaintiff-in-error aided or abetted the corporation in the wilful failure to pay the tax.

Two answers, each complete in itself, may be made to the inference that the judgment of conviction would be valid if it was claimed and proven that Johnston aided or abetted the corporation in the failure to pay the tax.

First, it was not necessary (assuming that the corporation failed to account for and pay over the taxes to the Government), in order to charge Johnston, to allege that he aided or abetted the corporation. He could be charged as a principal.

Vane vs. United States, 254 Fed., 232.

Secondly, a contention that Johnston aided or abetted the corporation, would necessarily presuppose the commission of an offense by the corporation. The corporation neither received nor was entitled to receive the moneys. A prosecution against it could not be sustained. It was never within the corporation's power to fail or wilfully fail to pay the taxes to the Government. Hence Johnston was not chargeable with aiding or abetting a failure, when none existed.

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POINT II

The tax moneys became the property of the United States the instant they were paid by the spectators to Johnston.

The opinion states:

The law imposed the duty upon the owner of the enterprise to make returns and pay the tax to the collector of internal revenue. The obligation so to do did not make the moneys those of the United States. The obligation to pay the Government the tax is not complied with until the tax has been paid.

The law imposes upon the person receiving payment for admissions the obligation of collecting a tax from the spectator and the duty to make returns and pay the tax to the collector of internal revenue. It is not contended, as the opinion states, that the obligation to make returns and pay over, renders the money those of the United States. It is urged, however, that the duty to collect the tax from the taxpayer (the spectator), when performed, does render the money collected, the money of the United States.

It is true that the obligation to pay the Government the tax is not complied with until the tax has been paid, assuming that passage of the opinion means the payment to the Government by the person who has collected. That transfer is not a payment of the tax. The tax is paid by the spectator. He pays it to the Government by placing it in the hands of the person required by law to collect it and account therefor to the Government.

174

If the moneys did not become the property of the United States at the time they were paid by the spectator, whose property did they become? If the moneys belonged to either the corporation or Johnston, they would be subject to attachment at the hands of their creditors. Obviously, no creditor of Johnston or the corporation could attach the tax moneys, because they were moneys of the United States, the instant they were paid by the spectators. A fortiori, the conversion of those moneys by the holder was embezzlement of moneys of the United States.

POINT III

The court erred in holding that the statements contained in the Internal Revenue Bulletin constitute a regulation of the Treasury Department and have the force and effect of law.

It is respectfully urged that the court has inadvertently overlooked the pronounced distinction existing between a Treasury decision or departmental regulation and a *ruling* contained in an Internal Revenue Bulletin. The Government has specifically pointed out such distinction by the provision on the initial page of all Internal Revenue Bulletins, whereon it sets forth that the rulings contained therein have none of the force or effect of Treasury decisions and do not commit the Department to any interpretation of the law which has not been formally approved and promulgated by the Secretary of the Treasury.

It cannot be too forcibly urged that the ruling relied upon 175 in support of the holding that moneys collected as taxes on admissions, are not moneys of the United States until paid to the collector, has not been formally approved and promulgated by the Secretary of the Treasury and has none of the force and effect of a Treasury decision or departmental regulation. Most decidedly, it does not commit the department to such an interpretation of the law.

The cases cited by this court are founded upon departmental decisions and regulations. While this court is free to follow the view expressed in the Internal Revenue Bulletin, it should not do so upon the theory that it is adopting the ruling of a Treasury decision or regulation.

Respectfully submitted,

WILLIAM HAYWARD,
United States Attorney.

JOHN E. JOYCE,
PETER J. MCCOY,

Assistant United States Attorneys, of Counsel.

William Hayward, United States attorney for the Southern District of New York, herewith certifies that he has read the foregoing petition; that the same, in his opinion, is well founded in point of law and that it is not interposed for the purpose of delay.

WILLIAM HAYWARD,

176 [Title omitted.]

A petition for a rehearing having been filed herein by counsel for the defendant in error:

Upon consideration thereof it is

Ordered, That said petition be and hereby is denied.

C. M. H.

J. M. M.

177 (Indorsed:) [Title omitted.]

178

United States Circuit Court of Appeals

Clerk's certificate

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 177, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of James J. Johnston, plaintiff in error, against United States, defendant in error, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 2nd day of May, in the year of our Lord one thousand nine hundred and twenty-three, and of the independence of said United States the one hundred and forty-seventh.

[SEAL.]

WM. PARKIN, *Clerk.*

179

Writ of certiorari and return filed Nov. 16, 1923

UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, greeting:

Being informed that there is now pending before you a suit in which James J. Johnston is plaintiff in error, and the United States of America is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the eleventh day of October, in the year of our Lord one thousand nine hundred and twenty-three.

WM. R. STANSBURY,

Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

181 [Title omitted.]

Stipulation as to return to writ of certiorari

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Second Circuit to the writ of certiorari granted therein.

JAMES M. BECK,
Solicitor General.

ARTHUR N. SAGER,
Counsel for Respondent.

OCT. 15, 1923.

182 *To the honorable the Supreme Court of the United States,
greeting:*

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated New York, November 9, 1923.

[SEAL.]

WM. PARKIN,
*Clerk of the United States,
Circuit Court of Appeals for the Second Circuit.*

[File indorsement omitted.]

(Indorsed on cover:) [File indorsement omitted.]

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